

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF KANE )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Wilk,  
 Petitioner,

vs.

NO: 11 WC 29738

Illinois State Police,  
 Respondent.

14IWCC0331

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of permanency and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission views this case differently than the Arbitrator and finds Petitioner is permanently disabled to the extent of 17.5% man as a whole under Section 8(d)2 of the Act and further finds Petitioner permanently lost 7.5% of the use of his left arm under Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$669.64 per week for a period of 87.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 17.5% loss of a man as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$669.64 per week for a period of 18.97 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 7.5% loss of use of the left arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

14IWCC0331

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: MAY 02 2014

MB/jm

O: 4/17/14

43

  
Mario Basurto

  
David L. Gore

  
Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**WILK, RICHARD C**

Employee/Petitioner

Case# **11WC029738**

**14IWCC0331**

**ILLINOIS STATE POLICE**

Employer/Respondent

On 5/29/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4678 PARENTE & NOREM PC  
PARAG P BOSALE  
221 N LASALLE ST SUITE 2700  
CHICAGO, IL 60601

2202 ILLINOIS STATE POLICE  
124 E ADAMS ROOM 600\*  
PO BOX 19461  
SPRINGFIELD, IL 62794

0639 ASSISTANT ATTORNEY GENERAL  
CHARLENE COPELAND  
100 W RANDOLPH ST  
CHICAGO, IL 60601

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PKWY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0499 DEPT OF CENTRAL MGMT SERVICES  
MGR WORKMENS COMP RISK MGMT  
801 S SEVENTH ST 6 MAIN  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

**CERTIFIED as a true and correct copy  
pursuant to 826 ILCS 305/14**

**MAY 29 2013**



**KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission**

STATE OF ILLINOIS )

)SS.

COUNTY OF KANE )

**14IWCC0331**

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)(8))
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
NATURE AND EXTENT ONLY**

**RICHARD C. WILK**

Employee/Petitioner

v.

**ILLINOIS STATE POLICE**

Employer/Respondent

Case # **11 WC 029738**

Consolidated cases: \_\_\_\_\_

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **GREGORY DOLLISON**, Arbitrator of the Commission, in the city of **GENEVA, IL**, on **2/06/13**. By stipulation, the parties agree:

On the date of accident, **7/23/10**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$109,741.84**, and the average weekly wage was **\$2,110.42**.

At the time of injury, Petitioner was **44** years of age, *married* with **3** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$Petitioner received full salary**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

**14IWCC0331**

**ORDER**

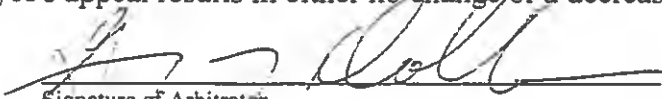
Respondent shall pay Petitioner the sum of \$669.64/week for a further period of 114.815 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused 22.963% loss of a person as a whole.

Respondent shall pay Petitioner the sum of \$669.64/week for a further period of 18.975 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 7.5% loss of use of a left arm.

The parties have stipulated that the following medical bills will be paid directly to the corresponding provider (if not paid already) in accordance with the medical fee schedule of Section 8.2 of the Act: Athletico - \$7,700.21; IL Spine & Scoliosis Center - \$575.00; Hinsdale Orthopaedics - \$41,598.50; Pain Treatment Surgical Suites - \$3,967.50; Pain Treatment Centers of Illinois - \$3,225.00.

**RULES REGARDING APPEALS** Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

5/23/13  
\_\_\_\_\_  
Date

MAY 29 2013

**FINDINGS OF FACT:**

**14IWC0331**

Petitioner has been working for the past 12 years as a master sergeant for Respondent. Approximately 50 individuals work under him on an all drug enforcement task force unit. Although he was working as a master sergeant on the date of his injury, he is currently the acting lieutenant for the region that covers several counties. Due to the nature of his job duties, he is required to work up to 16 hours per day, and he spends 40 percent of his time driving from one location to another. His job duties also include serving warrants, apprehending suspects and other tasks that are significantly physical.

On Friday, July 23, 2010 at approximately 4:45 pm, Petitioner was in the process of effectuating a tactical "surprise" arrest of a suspect who was driving a motor vehicle. Petitioner approached the vehicle with his handgun in his right hand. With his left hand he opened the door and reached into the vehicle to pull the keys out of the ignition. He then wrapped his left arm around the suspect's neck area and pulled him to the ground. During this process he felt a painful tearing sensation from his upper left shoulder area down to his elbow.

Petitioner testified that because of the surge of adrenaline he felt at that time, he did not believe he had suffered a serious injury. He arrived home that night around midnight, took some ibuprofen, and then went to bed. Petitioner provided that when he awoke the next morning, he was completely unable to use his left arm. He notified his supervisor regarding his condition and made an appointment to see his primary-care physician, Dr. Barbara Loeb. He saw Dr. Loeb on 7/26/10 (Monday), who referred him to Dr. Robert Welch, an orthopaedic surgeon.

**M&M Orthopaedics (Dr. Robert Welch)**

Petitioner saw Dr. Welch on 7/28/10. PX.1, p.8. Dr. Welch noted that Petitioner twisted his left elbow when he was trying to do a tactical takedown on 7/23/10. He had complaints of elbow and forearm pain. An x-ray showed no fracture. Petitioner was assessed with a left elbow sprain and referred for a course of physical therapy and anti-inflammatory medications. The doctor placed Petitioner on light duty, and instructed to follow-up in 1 month.

Petitioner testified that Respondent was able to accommodate him with light duty. He stated that he had to sign an agreement not to do any of the physical aspects of his job. He was given strictly administrative duties, which amounted to working at a desk for the entire day.

On 8/18/10, Dr. Welch noted that in addition to the left elbow, Petitioner's left shoulder was continuing to bother him. PX.1, p. 7. Resisted supination reproduced symptoms and he was not making significant progress with physical therapy. The doctor prescribed a Medrol Dosepak and added shoulder therapy to his treatment course.

On 8/20/10, Dr. Welch noted Petitioner could not fill the Medrol Dosepak prescription as same was not approved by Respondent. PX.1, p.7.

On 9/01/10, Dr. Welch noted Petitioner was experiencing "snapping" with pronation and supination. PX.1, p.6. Dr. Welch administered an injection into the elbow. The doctor noted same did not affect his pain level at all. He again had Petitioner continue with therapy and follow-up in one month.

On 9/22/10, Dr. Welch noted Petitioner had only one day of improvement after the injection and that the pain returned to its previous levels. PX.1, p.5. Petitioner reported that he had recently felt a pop in the elbow and had noticed increasing weakness. His shoulder and elbow pain persisted. Dr. Welch prescribed a left elbow MRI and left shoulder MRI arthrogram. Dr. Welch stopped therapy until he received the results from the testing.

**14IWCC0331**

On 10/01/10, a left elbow MRI was performed at Edward Hospital. PX.2, p.5. It was positive for mild per-tendinopathy of the distal biceps tendon. On 10/05/10, the left shoulder MRI arthrogram was completed. It revealed a SLAP tear of the labrum and mild tendinosis of the supraspinatus tendon. PX.2, p3-4.

Petitioner next saw Dr. Welch on 10/13/10. PX.1, p.5. After reviewing the MRI films, he concluded that there was peritendinitis of the biceps tendon and SLAP lesion. At that time, Dr. Welch referred Petitioner to Dr. Thangamani, a sports medicine specialist.

Petitioner testified that he was disappointed that Dr. Welch did not tell him from the beginning that he was not a shoulder specialist. He decided instead to make an appointment with Dr. Giridhar Burra, who was recommended to him by one of his physical therapists at Athletico.

#### **Hinsdale Orthopaedics – Dr. Giridhar Burra & Dr. Kenneth Schiffman**

Petitioner first saw Dr. Burra on 10/13/10. PX.3, p.5. Dr. Burra noted a SLAP lesion, a massive labral tear, and biceps tenodesis. He recommended surgery noting that all other conservative options had been explored. PX.3, p.10.

On 11/15/10, Petitioner saw Dr. Burra again and decided to go forward with surgery. PX.3, p.17. Dr. Burra removed him from work as of 11/18/10, the scheduled surgery date. PX.3, p.18.

On 11/18/10, Dr. Burra performed: (1) an arthroscopy of the left shoulder with a SLAP lesion repair, (2) biceps tendon tenodesis, (3) subacromial bursectomy, and (4) debridement of the partial-thickness rotator cuff. PX.3, p.20-22.

Post operatively, Petitioner underwent physical therapy. When he saw Dr. Burra on 11/20/10, Dr. Burra emphasized that his therapy be passive rather than active as his shoulder was still in a healing phase. PX.3, p.24. He remained completely off of work.

On 1/11/11, Dr. Burra noted Petitioner was still experiencing elbow pain and stiffness in his shoulder. PX.3, p.26. Dr. Burra proceeded with a cortisone injection in the shoulder. PX.3, p.28.

On 2/01/11, Petitioner reported shoulder improvement, but his left elbow problems persisted. Dr. Burra wanted him to get an updated left elbow MRI. PX.3, p.30. Petitioner was cleared to return to the sedentary light duty.

The MRI was completed on 2/03/11 showing 1.) mild tendinosis of the distal biceps tendon which was reported to have improved since the prior exam; 2.) moderate tendinosis of the olecranon insertion of the triceps tendon was noted; and 3.) no ligament tears were identified. PX.3, p.32

On 2/15/11 Dr. Burra noted Petitioner continued to experience pain in his elbow. Petitioner also related that when he awakens, he finds his fourth and fifth fingers are numb and that when he rests his left arm while driving, he feels a sharp pain. Since Dr. Burra felt that there was actual improvement in the biceps tendon, he was unable to determine the origin of the pain. He believed that there was possibly involvement of the radial

nerve or cubital tunnel syndrome and therefore referred Petitioner to Dr. Kenneth Schiffman, his partner at Hinsdale Orthopedics who specializes in hand surgery. PX.3, p.36.

141WCC0331

On 2/28/11, Dr. Schiffman noted that the Petitioner was possibly experiencing "tethering or compression of the radial nerve" in his arm. PX.3, p.38. He suggested a radial nerve block as a diagnostic test, but he wanted Dr. Burra to agree before going forward. Dr. Burra did agree with the plan. PX.3, p.40.

The nerve block was originally scheduled at Good Samaritan Hospital. Petitioner provided that because he and his wife had a bad experiences in the past there, he chose an alternate facility.

On 5/16/11, Dr. Burra noted the nerve block finally proceeded by Dr. Yousuf Sayeed. Because of Petitioner's continual complaint, Dr. Burra reported that it appeared the nerve block was not perform at the correct location. PX.3, p.47. On 5/24/11, Dr. Schiffman also noted that the nerve block was done at the distal lateral arm rather than the correct location. PX.3, p.51. He noted that pain was provoked when Petitioner drives with his left arm on top of the steering wheel. His pain was consistent and in the same location. The doctor suggested that Petitioner continue to follow-up with Dr. Burra.

On 6/22/11, Dr. Schiffman noted that Petitioner continued therapy but still experienced left arm pain. PX.3, p.53. He advised him to continue therapy for four to five weeks.

On 7/12/11, Dr. Burra noted that Petitioner's shoulder condition had progressed to the point where he could try a baseline functional capacity evaluation. He also provided that Petitioner should continue treatment with Dr. Schiffman as a left arm radial nerve exploration surgery was not out of the question. PX.3, p.55.

On 7/20/11, Dr. Schiffman noted that Petitioner would feel more left arm nerve-type pain when he stretched his neck. PX.3, p.58. Given the possible cervical component of his left arm symptoms, Dr. Schiffman considered that a cervical MRI may be warranted.

#### **Illinois Spine & Scoliosis Center – Dr. Anthony Rinella**

Upon suggestion from Dr. Burra and referral from Dr. Loeb, Petitioner saw Dr. Rinella on 8/18/11 for a cervical spine evaluation. PX.4, p.4. Dr. Rinella referred him for a cervical MRI to rule out the potential for a cervical radiculopathy. Dr. Schiffman agreed with this referral. PX.3, p.60.

The MRI was performed on 10/20/11. At C4-C5, C5-C6 there were very mild endplate changes to cause some mild impression upon the thecal sac. At C6-C7 there was very mild disc bulge with some minimal impression upon the thecal sac. PX.4, p.6.

On 10/20/11, Dr. Rinella reported that the MRI demonstrated that Petitioner had left C3-4 foraminal stenosis, with no other areas of neural impingement. Dr. Rinella noted his impression of cervical spondylotic radiculopathy. PX.4, p.8. He referred Petitioner to Dr. Faris Abusharif for an epidural steroid injection. PX.5, p.6.

#### **Pain Treatment Centers of Illinois – Dr. Faris Abusharif**

On 12/01/11, Petitioner presented to Dr. Abusharif. The doctor noted Petitioner complained of left-sided neck pain with radiation into the left upper extremity with residual shoulder pain. Dr. Abusharif performed a C4-C5 cervical epidural injection with follow-up scheduled in two weeks for a possible repeat injection. PX.5, p.15.



Petitioner followed-up with Dr. Abusharif on 12/21/11. Petitioner reported that his pain had markedly improved indicating an approximate 90% reduction in pain levels. Dr. Abusharif felt that Petitioner's improvement was significant enough that Petitioner should forgo a second injection. PX.5, p.22.

Petitioner returned to Dr. Rinella on 2/17/12 where he was cleared to return to work from a cervical perspective. PX.4, p.10. He saw Dr. Burra again on 3/01/12 where he underwent an ultrasound guided left shoulder injection. PX.3, p.66. He was seen on 4/02/12 where Dr. Burra allowed him to return to work without restriction, and was finally declared to have obtained maximum medical improvement.

Petitioner testified that he had never injured his left arm, left shoulder, or neck prior to the 7/23/10 work incident. This is confirmed by his pre-accident medical records from Dr. Dale Buranosky, who saw Petitioner on 8/30/07 and 9/06/07 for foot and right shoulder problems. PX. 1, p.9. None of these records mention any left arm, left shoulder, or neck problems.

Petitioner testified that he still has left shoulder pain and left arm numbness, and he especially notices the symptoms when he has to drive or twist a doorknob. He was once able to bench press 310 lbs., but now he can barely lift 210 lbs. His total weight has not changed, but his body composition is more fatty than muscle now. He no longer plays basketball, baseball, and other sports which he used to do on a regular basis pre-accident.

Petitioner was asked whether he was able to pass the yearly PFIT exam since his injury, a test required of all state police officers, to which he responded that he did pass. He stated that the test is now geared to various age groups and requires a person to use 70% of their body weight. The test includes strength and bench pressing as well as walking three miles or running a lesser distance.

### CONCLUSIONS OF LAW

Based on the medical evidence, Petitioner suffered left shoulder, left arm, and neck injuries as a result of his 7/23/10 work accident. The left shoulder injury was identified by Dr. Welch and Dr. Burra as a SLAP lesion, a massive labral tear, and biceps tendonitis. Petitioner's condition necessitated a SLAP lesion repair, biceps tendon tenodesis, debridement of a partial rotator cuff, and a subacromial bursectomy. Based on the above as well as Petitioner's credible testimony regarding his present complaints, the Arbitrator finds Petitioner is permanently disabled to the extent of 17.963% under Section 8(d)2 of the Act.

Petitioner also suffered an elbow injury that required a radial nerve block, physical therapy, and injections. Dr. Schiffman diagnosed this as radial nerve entrapment. The symptoms radiated into the Petitioner's hand and fingers, restricting his physical activity. The Arbitrator finds that this portion of his injury warrants an award of 7-1/2% loss of use of the left arm under Section 8(e) of the Act.

With regard to his neck, Dr. Rinella and Dr. Schiffman diagnosed cervical radiculopathy. This was confirmed by the Petitioner's stenosis at C3-C4 and disc bulge at C6-C7. The radicular symptoms were markedly reduced after a cervical epidural injection. Petitioner has since returned to full duty work, albeit, he no longer takes part in certain tactical maneuvers. The Arbitrator finds that this portion of his injury warrants an award of 5% loss of a person as a whole under Section 8(d)2 of the Act.

STATE OF ILLINOIS        )  
                                       ) SS.  
 COUNTY OF MADISON     )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeffrey Baecht,  
       Petitioner,

vs.

NO: 10WC 25527

Olin Brass,  
       Respondent,

**14IWCC0332**

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses (both incurred and prospective) and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 10, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

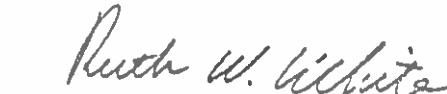
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 05 2014  
o042214  
CJD/jrc  
049

  
Charles J. DeVriendt

  
Daniel R. Donohoo

  
Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**BAECHT, JEFFREY**

Employee/Petitioner

Case# **10WC025527**

**OLIN BRASS**

Employer/Respondent

**14IWCC0332**

On 5/10/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1580 BECKER SCHROADER & CHAPMAN PC  
TODD J SCHROADER  
3673 HWY 111 PO BOX 488  
GRANITE CITY, IL 62040

0299 KEEFE & DEPAULI PC  
MICHAEL F KEEFE  
#2 EXECUTIVE DR  
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF Madison )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION  
 19(b)

Jeffrey Baecht  
 Employee/Petitioner

Case # 10 WC 25527

v.

Consolidated cases: \_\_\_\_\_

Olin Brass  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **February 28, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On the date of accident, **May 18, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$45,760.00** ; the average weekly wage was **\$880.00** .

On the date of accident, Petitioner was **47** years of age, *married* with **0** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$N/A** for TTD, **\$N/A** for TPD, **\$N/A** for maintenance, and **\$N/A** for other benefits, for a total credit of **\$N/A**.

Respondent is entitled to a credit of **\$all bills paid under group** under Section 8(j) of the Act.

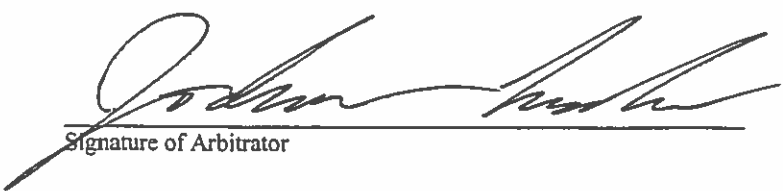
## ORDER

For reasons set forth in the attached decision, the proposed left knee replacement surgery is not causally related to the accident of May 18, 2010.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

April 30, 2013  
Date

MAY 10 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFFREY BAECHT,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 10 WC 25527
	)	
OLIN BRASS,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Sections 8(a) and 19(b) of the Act.

STATEMENT OF FACTS

The petitioner is a crane operator for the respondent, 47 years old on the date of loss. He testified that on May 18, 2010, he stumbled in a depression in the floor, approximately two to three inches deep. He reported the incident and neither accident nor notice was disputed. He asserts left knee symptoms following this, culminating in the current surgical recommendation.

The petitioner has had a long and relatively complex history of bilateral knee complaints. Regarding his right knee, he noted complaints beginning with a football injury in high school resulting in surgery, and a lengthy history of osteoarthritis which resulted in a right knee total arthroscopy following this incident (but which the parties agreed was not related to this incident). He also noted right foot complaints which resulted in a July 2010 surgery (also not related to this incident). Regarding the left knee, he acknowledged a history extending back to a 1997 workplace injury for which he had left knee surgery; that case resulted in a finding of 20% loss to the left leg (98 WC 48666, see RX6). Moreover, he also had a 1993 surgery to the left knee involving removal of bursitis following a staph infection to the knee. He has had periodic treatment to both knees for a period of many years as detailed below.

On December 15, 2008, he presented to Dr. Vest, noting complaints of bilateral knee pain for which he received occasional cortisone injections into the knees. He related multiple knee injuries playing sports and had surgeries to both knees. Injectins to both knees were performed at the time. Dr. Vest discussed surgery with the claimant, but the claimant wanted to defer surgery until he was older. RX2.

On January 7, 2009, the petitioner began Supartz injections into both knees. The petitioner asserted Dr. Vest's records were wrong, and he received steroids to the left knee, not Supartz. The Arbitrator notes, however, that Dr. Vest's records show Supartz injections to both knees on multiple dates, suggesting a typographical error would have had to have been made on at least five separate dates with multiple references to the left knee on those occasions. See RX2.

On August 20, 2009, the petitioner returned to Dr. Vest, noting pain relief had lasted for several months but the bilateral knee pain recurred in July 2009. Steroid injections were performed to both knees at that point. RX2.

On February 17, 2010, the petitioner presented to Dr. Vest, complaining of increased left knee pain over the prior three to four weeks. Injections were performed at that time to both knees. RX2.

Following this incident, on May 20, 2010, he presented to Dr. Vest. PX1. Dr. Vest noted a history of degenerative joint disease in the left knee. It was noted he was seeing Dr. Shepperson for his right knee. The petitioner noted twisting his left knee in January, but did not get medical treatment at that time. He related stepping off a two-inch ledge on May 18 and twisted it again. It was noted that he had bilateral knee injections in August 2009 and a Supartz series to the bilateral knees in February 2009, as well as a history of prepatellar busectomy. An MRI of the left knee was prescribed. On May 27, 2010, the MRI was conducted. The MRI noted considerable degenerative osteoarthritis and degeneration in the menisci, resulting in tearing and fragmentation to the knee. PX4.

On May 28, 2010, Dr. Shepperson, Dr. Vest's colleague, saw the petitioner. He noted a recurrence of left knee pain following walking on uneven ground at work. Dr. Shepperson noted that the left knee MRI demonstrated progressive degenerative arthritis resulting in bone on bone contact. Dr. Shepperson opined that "although the symptoms did flare while walking at work, this is not a compelling injury." See RX2 p.25. The petitioner elected to defer surgery at that point, and ceased treating with that facility.

On July 20, 2010, the petitioner presented to Dr. Lux for his right knee. He noted a history of cartilage removal in the right knee in 1979, right foot surgery in 1983, a laminectomy in 1991, and left knee bursa surgery in 1993. He noted unrelenting pain in the right knee and noted medication, bracing, cortisone injections as well as Euflexxa injections in April and May 2010 had not provided lasting relief. The petitioner also advised Dr. Lux of torn cartilage in the left knee which had been causing some trouble over the last few months. Dr. Lux noted the x-rays of the knees demonstrated bone-on-bone degenerative arthritis and osteophytic formation in the right knee and moderate medial compartment arthritis in the left knee. Dr. Lux opined athroscopic surgery would not be of benefit to either knee, and recommended right knee replacement. PX2. The petitioner underwent the right knee replacement on August 23, 2010. PX5.



On September 24, 2010, Dr. Lux saw the petitioner, who noted substantially improved pain in the right knee. Dr. Lux prescribed postoperative therapy. On December 14, 2010, the petitioner was doing quite well regarding the right knee. Dr. Lux discontinued formal therapy and released him to work without restrictions, instructing him to follow up in eight months for a one-year postoperative check. No complaints were noted relative to the left knee at that point. PX2.

On June 21, 2011, the petitioner saw Dr. Lux in follow-up. He was pleased regarding the right knee outcome, but noted his left knee had been troublesome for several months. PX2. He reported injuring it on a slick floor at work. Dr. Lux noted substantial arthritis in the left knee and provided a cortisone injection. He advised the petitioner to tell the petitioner's attorney to contact Dr. Lux and forward any paperwork needed for a causal evaluation.

On February 17, 2012, the petitioner advised that the left knee continued to be painful. Dr. Lux noted the degree of arthritis in the knee and that "[c]ertainly, he will need to have it replaced at some point." Dr. Lux drained fluid from the knee and injected it at that point. In a letter to the petitioner's counsel on February 21, he noted bone-to-bone contact and recommended total knee replacement. He opined that the petitioner's day to day activities and the May 18, 2010 accident played a causative factor in the need for the knee replacement surgery. PX2. He reiterated those opinions in deposition on April 26, 2012. See PX5.

On June 20, 2012, the petitioner was seen by Dr. Nogalski for a Section 12 exam. Dr. Nogalski noted the prior work-related knee arthroscopy took place in approximately 2000, as well as the 1993 bursal excision. Dr. Nogalski had access to a number of pre-injury records, including an MRI of May 5, 2010 which had demonstrated degenerative joint disease with degenerative meniscal tearing. He also noted multiple injection series bilaterally in 2008 and 2009 and Dr. Shepperson's report where he noted the incident was not compelling and this issue was essentially degenerative in nature. Dr. Nogalski opined the petitioner had clearly established bilateral degenerative arthritis which predated this injury, and that the injury neither caused nor accelerated that condition. While total knee replacement was medically appropriate, the need for it predated the injury in question and was not related to any acute process. Dr. Nogalski reiterated those opinions in deposition. See generally RX1.

On August 24, 2012, the petitioner saw Dr. Lux in follow-up. The petitioner reported at that time that he was not yet at the point where he wanted to have it replaced. The left knee was injected at that time and his painkillers were renewed. PX2. At trial, however, the petitioner testified he wanted to have the surgery.

### OPINION AND ORDER

The petitioner clearly had significant and symptomatic degenerative joint disease in his left knee prior to May 18, 2010. The petitioner attempted to minimize the true

extent of his prior treatment by asserting Dr. Vest's records were not accurate, but the Arbitrator does not find this allegation believable. The conclusion the Arbitrator draws is that the claimant's intent is to divert attention from his treating physician's conclusion that this minor incident did not cause, aggravate or accelerate the need for the surgery contemplated herein. While treating physicians are usually granted a degree of deference as opposed to Section 12 examiners, in this case, the examiner, Dr. Nogalski, agrees with the first treating physician, Dr. Shepperson, that no causal connection exists. Their opinion is credible and persuasive, and the Arbitrator adopts the same.

Taking the evidence as a whole, the Arbitrator concludes that the petitioner did not establish a causal connection between the incident on May 18, 2010 and his current need for a left knee replacement. The prospective surgery is therefore denied.

The petitioner submits PX6, medical bills, which include bills for \$394.00 from Alton Memorial Hospital for an X-ray on May 19, 2010 and \$57.00 for evaluation at Orthopedic and Sports Medicine on May 20 and May 28, 2010. These bills appear reasonably related to the initial injury and shall be paid by the respondent to the providers within the confines of Section 8(a) and subject to the limits of Section 8.2 of the Act. Respondent is entitled to any appropriate credit under Section 8(j) for these payments but shall hold the claimant harmless against recoupment efforts for such.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF )  
 JEFFERSON

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bobbie Smith,  
 Petitioner,

vs.

NO: 10WC 30150

**14IWCC0333**

State of Illinois - Lawrence Correctional Center,  
 Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, temporary total disability, medical, permanent partial disability, penalties, fees, mileage and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 15, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: MAY 05 2014  
 o042214  
 CJD/jrc  
 049

  
 Charles J. DeYriendt

  
 Daniel R. Donohoo

  
 Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

SMITH, BOBBIE

Employee/Petitioner

Case# 10WC030150

SOI/LAWRENCE CORRECTIONAL CENTER

Employer/Respondent

14IWCC0333

On 7/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0332 LIVINGSTONE MUELLER ET AL  
D SCOTT MURPHY  
P O BOX 335  
SPRINGFIELD, IL 62705

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PKWY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

4948 ASSISTANT ATTORNEY GENERAL  
WILLIAM H PHILLIPS  
201 W POINTE DR SUITE 7  
SWANSEA, IL 62226

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT  
WORKERS' COMPENSATION CLAIMS  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 305/14

JUL 15 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )

)SS.

COUNTY OF Jefferson )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION

Bobbie Smith  
 Employee/Petitioner

Case # 10 WC 30150

v.

Consolidated cases: \_\_\_\_\_

State of Illinois/Lawrence Correctional Center  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on May 8, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

## DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an **accident** occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other Mileage

## FINDINGS

On February 9, 2010, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did not sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned \$52,387.00; the average weekly wage was \$1,007.50.

On the date of accident, Petitioner was 60 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

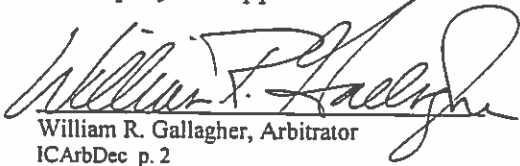
Respondent is entitled to a credit of \$0.00 under Section 8(j) of the Act.

## ORDER

Based upon the Arbitrator's conclusions of law attached hereto, claim for compensation is denied.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
William R. Gallagher, Arbitrator  
ICArbDec p. 2

July 8, 2013  
Date

JUL 15 2013

## Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained a repetitive trauma injury to her left foot arising out of and in the course of her employment for Respondent. The Application alleged a date of accident (manifestation) of February 9, 2010, and that Petitioner was subjected to repetitive walking and standing which caused injuries to her left foot. Respondent disputed liability on the basis of accident and causal relationship. Petitioner also filed a petition for Section 19(l) and Section 19(k) penalties as well as Section 16 attorneys' fees.

Petitioner testified that she worked for Respondent as a Dietary Supervisor II and her job duties required her to supervise 35 to 40 inmates in the prison kitchen. Petitioner's normal work day was seven and one-half hours (7 ½) and she had to stand on her feet on a concrete surface for virtually the entire working day. There were also occasions that Petitioner had to work an extra shift which meant that she had to be on her feet for approximately 17 hours.

Petitioner testified that on February 9, 2010, approximately one-half of the way through her shift, she began to experience pain on the side of her left foot. Petitioner sought medical treatment from Dr. Jason Bickel, a podiatrist, who initially saw her on March 9, 2010, at which time Petitioner had complaints in regard to both her right and left feet; however, the left foot symptoms were greater than those of the right. Petitioner was prescribed a brace for the left foot and some medication.

Dr. Bickel saw Petitioner on March 29, 2010, and noted that Petitioner's left foot symptoms had not improved with the use of the brace. Dr. Bickel opined that Petitioner had likely peroneus brevis tendinitis and a possible peroneus brevis tendon tear. In regard to causality, Dr. Bickel's record of that date stated "I would not argue that this may have been caused during a work activity as her job requires her to remain on her feet for extended periods of time, however with no definite injury on that date, I am unable to say definitely that this was indeed caused at work." Dr. Bickel had an MRI scan performed on June 23, 2010, which revealed swelling and possible bone bruising or a vascular necrosis of the distal fourth metatarsal. Dr. Bickel saw Petitioner again on July 21, 2010, and opined that Petitioner needed a period of immobilization of the foot and decreased weight-bearing. Dr. Bickel prescribed an air cast for Petitioner's left foot and authorized her to be off work.

Dr. Bickel continued to treat Petitioner through December, 2010, but her condition did not improve. When he saw her on December 13, 2010, he recommended that she obtain a second opinion. In regard to causality, Dr. Bickel prepared a report dated September 9, 2010, which stated that "...any type of activity, including walking on concrete floors, but also activities of daily living, can contribute to a stress fracture or tendinitis." He opined that Petitioner's work activities could be a contributing factor to her left foot problems.

On January 3, 2011, Petitioner was seen by Dr. Paul Alley, an orthopedic surgeon, who opined that Petitioner had peroneal tendinitis and recommended Petitioner have another MRI scan performed. On January 10, 2011, an MRI scan was performed which revealed swelling and probable stress fractures of the second and third metatarsal heads. Dr. Alley prescribed some shoe liners, physical therapy and authorized Petitioner to perform sedentary work.



On March 17, 2011, Petitioner was evaluated by Dr. James Butler, an orthopedic surgeon associated with Dr. Alley, who ordered nerve conduction studies and a CT arteriogram, both of which were normal. He referred Petitioner to Dr. Jeremy McCormick, an orthopedic surgeon in St. Louis. Dr. McCormick examined Petitioner and reviewed the prior medical records and diagnostic studies. His initial impression was that Petitioner had continued left foot pain and recommended that she have another MRI performed. Another MRI was performed on June 1, 2011, which was normal other than some mild arthritis in the forefoot. Dr. McCormick recommended Petitioner have some custom made orthotic devices and authorized her to remain off work. Dr. McCormick saw Petitioner on June 29, 2011, and his impression was persistent left foot pain. Dr. McCormick saw Petitioner again on July 27, 2011, and opined that he had no treatment other than the orthotic devices that he could recommend to her. When he saw her on August 24, 2011, he noted that she had attended a NASCAR race in Michigan and was able to ambulate without much difficulty. He examined Petitioner's left foot and described a normal clinical examination. He opined that she could return to work without restrictions, was at MMI and discharged her from care.

At the direction of the Respondent, Petitioner was examined by Dr. Gary Schmidt, an orthopedic surgeon who specializes in foot/ankle surgeries. Dr. Schmidt reviewed various medical records provided to him and examined the Petitioner. Other than "foot pain," Dr. Schmidt could not opine as to a specific diagnosis because of the lack of positive objective findings. Dr. Schmidt could not identify any specific condition attributable to the accident that could explain Petitioner's ongoing complaints.

At trial, Petitioner testified that she still has persistent complaints of left foot pain and that she does wear the orthotic devices if she is going to be on her feet for an extended period of time. Petitioner returned to work in August, 2011, and continued to work until she took early retirement in October, 2012, stating that she got tired of limping at work because of her ongoing left foot problems.

#### Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner did not sustain a repetitive trauma injury to her left foot arising out of and in the course of her employment for Respondent and that her current complaints of ill-being referable to the left foot are not related to any work activity.

In support of this conclusion the Arbitrator notes the following:

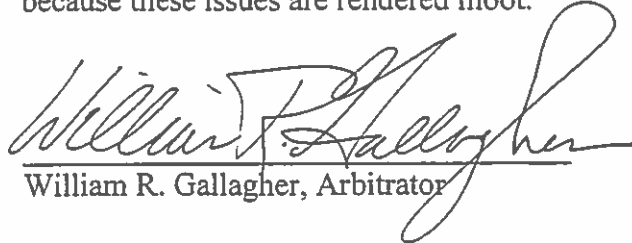
The medical evidence fails to support the conclusion that Petitioner has any current identifiable diagnosis of ill-being in the left foot attributable to her work activities. Neither Dr. McCormick, one of Petitioner's treating physicians, nor Dr. Schmidt, Respondent's Section 12 examiner, could make a specific diagnosis other than the fact that Petitioner had "foot pain."

While Dr. Bickle opined that Petitioner's foot symptoms could be work-related, he also stated that normal activities of daily living could also cause the condition. This indicates that



Petitioner's work activities did not exposure her to a risk greater than that to which the general public is exposed.

In regard to disputed issues (J), (K), (L), (M) and (O) the Arbitrator makes no conclusions of law because these issues are rendered moot.



William R. Gallagher, Arbitrator

STATE OF ILLINOIS       )  
   ) SS.  
 COUNTY OF MADISON     )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donna Dwiggins,

Petitioner,

vs.

NO: 11WC 14539

**14IWC0334**

Dollar General,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical (both incurred and prospective), temporary total disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 9, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

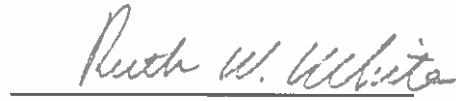
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:  
o042214  
CJD/jrc  
049

MAY 05 2014

  
Charles J. DeVriendt

  
Daniel R. Donohoo

  
Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**DWIGGINS, DONNA**

Employee/Petitioner

Case# **11WC014539**

**DOLLAR GENERAL**

Employer/Respondent

**14IWCC0334**

On 5/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0810 BECKER PAULSON & HOERNER ET AL  
RODNEY THOMPSON  
5111 W MAIN ST  
BELLEVILLE, IL 62226

1505 SLAVIN & SLAVIN  
MARCY E BENNETT  
20 S CLARK ST SUITE 510  
CHICAGO, IL 60603

STATE OF ILLINOIS )

)SS.

COUNTY OF MADISON )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)(18))        |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

Donna Dwiggins  
Employee/Petitioner

Case # 11 WC 014539

v.

14IWCC0334

Consolidated cases:     

Dollar General  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Gerald Granada, Arbitrator of the Commission, in the city of Collinsville, on March 28, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

## FINDINGS

On the date of accident, Dollar General, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$9,617.40; the average weekly wage was \$184.95.

On the date of accident, Petitioner was 54 years of age, *single* with 0 children under 18.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$1,083.27 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$1,083.27.

Respondent is entitled to a credit of \$340.00 under Section 8(j) of the Act.

## ORDER

Petitioner has failed to meet her burden of proof regarding the issue of causation. Therefore, her claim for benefits are denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

5/6/13  
Date

MAY - 9 2013

## Findings of Fact

Petitioner testified that on July 23, 2009 she was working for Dollar General, as a clerk. While she was working, the stool she was sitting on collapsed. The stool was approximately one foot high or less, and when she fell, she landed on her back. She reported her injury on the same day.

Petitioner was seen at St. Elizabeth's Hospital on July 27, 2009, four days after she fell. She was examined and underwent x-rays of the thoracic spine, which showed a compression deforming of the T3 vertebral body. (Pet. Ex. #5). She sought treatment from Dr. Michael Fuller on July 29, 2009. (Pet. Ex. #3). Dr. Fuller assessed Petitioner as having a T3 compression fracture, and kept her off work for 10 days. At her follow up visit with Dr. Fuller on August 19, 2009, he recommended Petitioner begin physical therapy. Petitioner began physical therapy at Memorial Physical Therapy Center on August 13, 2009. (Pet. Ex. #2). She followed up with Dr. Fuller on August 24, 2009 at which time, he noted negative straight leg raising, negative elevated leg test, and positive posterior tenderness. She continued conservative care, including physical therapy, home exercise and follow-up with Dr. Fuller. On August 31, 2009 Dr. Fuller released the Petitioner to light duty work. (Pet. Ex. #3) Petitioner was seen at Memorial Hospital on September 14, 2009 due to complaints of left shoulder pain. (Pet. Ex. #2)

On September 29, 2009 Petitioner returned to see Dr. Fuller, complaining of pain and stiffening of the neck. Dr. Fuller recommended an MRI of the cervical spine and continued Petitioner on light duty work. (Pet. Ex. #3) Petitioner underwent an MRI on October 22, 2009 at Metro Imaging. The MRI showed evidence of degenerative disc disease at C5-C6 levels. On November 6, 2009, Dr. Fuller noted the MRI did not show evidence of a compressive neuropathy at the spinal level. Petitioner was released to work full duty, on November 6, 2009 and released from care from Dr. Fuller. (Pet. Ex. #3).

Petitioner testified that she returned to work in a full duty capacity on November 6, 2009. She worked in a full duty capacity for Respondent from November 6, 2009 until February 15, 2010 - at which time she was terminated due to a 'short cash register'. She testified that her separation from Dollar General is unrelated to her workers' compensation case. She did not seek any additional treatment following her November 6, 2009 visit with Dr. Fuller for more than 20 months. (Pet. Ex. #1)

Petitioner testified that she began to see Dr. Kennedy, at the request of her attorney on July 21, 2011. Dr. Kennedy examined Petitioner on July 21, 2011 and noted pain between her shoulder blades. Dr. Kennedy reviewed the MRI of the cervical spine from October 22, 2009 and noted degenerative disc disease at multiple levels, and a 50% compression fracture from the July 27, 2009 x-rays. Dr. Kennedy was unable to determine whether the compression fracture was acute or chronic. (Pet. Ex. #1) Dr. Kennedy also stated that Petitioner suffered from Osteopenia, a degenerative thinning of the bone.

Petitioner next saw Dr. Kennedy on December 19, 2011. At that time, another examination was performed. Petitioner underwent an MRI on February 13, 2012. Dr. Kennedy reviewed the films, and noted spinal canal stenosis and foraminal encroachment at C5-6. Dr. Kennedy recommended a cervical discectomy and fusion with plating at the C5-6 level. Dr. Kennedy opined that likely Petitioner's need for surgery was caused by her preexisting condition, and degenerative changes which naturally developed over time. (Pet. Ex. #1, pg. 25) Dr. Kennedy also indicated the Petitioner should remain off work.

Petitioner was seen by Dr. Peter Mirkin at the request of the Respondent on March 5, 2012. Dr. Mirkin opined in his report of the same date, that he noted an 'old' compression fracture at T3 based on the October 2009 MRI. Dr. Mirkin reviewed the x-ray and MRI reports from 2009 and 2012 and noted spondylitic disease at C5-6, old healed compression fracture in the thoracic spine, and moderate degenerative changes in the lumbar

spine. In review, Dr. Mirkin stated the MRI showed spondylitic disease at C5-6 and a healed compression fracture at T3. Dr. Mirkin stated the spondylitic disease is unrelated to her injury and any need for surgery is unrelated to her injury at work. In his report, Dr. Mirkin notes that the Petitioner "...tells me she has applied for social security and has no intention of returning to work." (Resp. Exh. 1, p.1)

The Petitioner testified that she was continuing to have symptoms in her upper back with numbness and tingling radiating into her left upper extremity. She testified that her symptoms seemed to be getting worse. She stated that she was still using medication prescribed by Dr. Kennedy and that she was paying for the prescriptions herself as she had no insurance. She also made some co-payments to Dr. Fuller when she initially saw him for treatment following the accident. She denied any prior injuries to her spine or any further injuries to her spine since the event of July 23, 2009.

**Based on foregoing, the Arbitrator makes the following conclusions:**

1. Petitioner failed to meet her burden of proof regarding the issue of causation. The Arbitrator notes that the Petitioner did sustain a mid thoracic compression fracture from her fall on July 23, 2009. However, after undergoing conservative treatment for this condition, she was released by her treating physician to return to work full duty as of November 6, 2009 and did not seek any follow up medical treatment until her attorney directed her to see Dr. Kennedy on July 21, 2011. The Arbitrator finds that the 20 month gap in medical treatment, coupled with the Petitioner's own statements to Dr. Mirkin in which she indicated that she had no intention on returning to work, cast serious doubt on the Petitioner's credibility. The Arbitrator finds the opinions of Dr. Mirkin more persuasive on the issue of causation and adopts the same in support of this decision that Petitioner's current condition of ill-being is due to degenerative and spondylitic disease, which is not related to her healed thoracic compression fracture.
2. Based on the Arbitrator's findings regarding causation, Petitioner's remaining claims for benefits are denied.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF MADISON )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	X None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CYNTHIA JENKINS,

Petitioner,

vs.

NO: 11 WC 44692

STATE OF ILLINOIS – SOUTHERN ILLINOIS UNIVERSITY, CARBONDALE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, manifestation date, notice, and medical expenses both current and prospective, and being advised of the facts and law, changes the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

In the award section at the end of the Decision of the Arbitrator, the Arbitrator orders that "Respondent shall authorize and pay for prospective medical treatment including, but not limited to, the right arm surgery as recommended by Dr. Choi." In the body of the decision, the Arbitrator found that Petitioner proved causation of a condition of ill being of her right arm. As clarification, the Commission notes that the order for prospective medical treatment is limited to treatment for Petitioner's current condition of ill being of her right arm.

141WCC0335

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 12, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 05 2014

RWW/dw  
O-3/26/14  
46



Daniel R. Donohoo



Charles J. DeVriendt

DISSENT

I respectfully dissent from the majority. I do not believe Petitioner sustained her burden of proving her work activities were a causal factor in the development of her right epicondylitis. I would have reversed the Arbitrator and found no accident/causation.

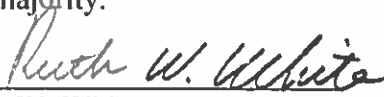
Petitioner testified she performed routine clerical work such as typing, filing, writing, carrying laptops and periodicals, and loading and unloading a projector for presentations. In finding Petitioner proved accident/causation, the Arbitrator found Petitioner's testimony credible and that the causation opinion of Petitioner's treating doctor, Dr. Choi, more persuasive than that of Respondent's IME, Dr. Sudekum.

However, even if Petitioner was completely accurate about her work activities, I do not believe she proved accident or causation. Even completely accepting her testimony, the activities do not appear to be of such a magnitude to cause the apparently extensive injury to her elbow. Specifically, her testimony about loading the projector is particularly unpersuasive because her symptoms appear to have begun at latest in 2008 or 2009, when she began to use

heat therapy. However, she testified she did not purchase the projector until 2010, a significant time after symptoms commenced.

In this case, I find the opinions of Dr. Sudekum very persuasive. Dr. Sudekum noted that repetitive activity in itself is not sufficient to cause epicondylitis. He explained there has to also be forceful gripping, grasping, or vibration. In particular, Dr. Sudekum makes an excellent point that if work activities indeed caused her condition one would expect it to improve while she was off work for more than a year; it did not. Dr. Choi made no mention that Petitioner was off work when he treated her and did not impose any work restrictions after his diagnosis. Dr. Sudekum also noted that Petitioner's diffuse symptoms other than her elbow, which are specified both in her patient questionnaire and in her Application for Adjustment of Claim, suggests a systemic problem not related to the relatively benign work activities in which she was engaged.

For these reasons I respectfully dissent from the majority.

  
Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

JENKINS, CYNTHIA

Employee/Petitioner

Case# 11WC044692

SOI/SOUTHERN ILLINOIS UNIVERSITY-  
CARBONDALE

Employer/Respondent

141WCC0335

On 3/12/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0996 THOMAS C RICH PC  
6 EXECUTIVE DR  
SUITE 3  
FAIRVIEW HTS, IL 62208

0904 STATE UNIVERSITY RETIREMENT SYS  
PO BOX 2710 STATION A\*  
CHAMPAIGN, IL 61825

0558 ASSISTANT ATTORNEY GENERAL  
MOLLY WILSON DEARING  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0499 DEPT OF CENTRAL MGMT SERVICES  
MGR WORKMENS COMP RISK MGMT  
801 S SEVENTH ST  
8 MAIN  
SPRINGFIELD, IL 62794-9208

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 305/14

MAR 12 2013



  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF MADISON )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION  
 19(b)

Cynthia Jenkins

Employee/Petitioner

v.

Case # 11 WC 44692

Consolidated cases: \_\_\_\_\_

State of Illinois/Southern Illinois University - Carbondale

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on January 24, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

**FINDINGS**

On the date of accident (manifestation), November 9, 2011, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$60,802.13; the average weekly wage was \$1,169.27.

On the date of accident, Petitioner was 52 years of age, married with 0 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

**ORDER**

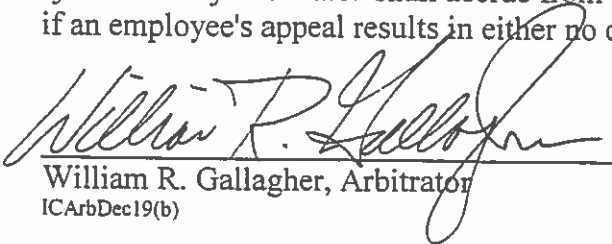
Respondent shall pay for reasonable and necessary medical services as identified in Petitioner's Exhibit 1 as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit as provided in Section 8(j) of the Act.

Respondent shall authorize and make payment for prospective medical treatment including, but not limited to, the right arm surgery as recommended by Dr. Choi.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
 William R. Gallagher, Arbitrator  
 IC Arb Dec 19(b)

March 8, 2013  
 Date

MAR 12 2013

## Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained a repetitive trauma injury arising out of and in the course of her employment for Respondent. The Application alleged a date of accident (manifestation) of November 9, 2011, and that Petitioner sustained repetitive trauma to the right and left hands/wrists; right and left arms/elbows and right and left shoulders. At trial, the testimony of Petitioner was limited to the right arm and elbow and her claim was limited to that area of the anatomy. Respondent disputed liability on the basis of accident, notice and causal relationship.

Petitioner began her employment for Respondent in the Fall of 1998 and initially worked as a receptionist. As a receptionist, Petitioner testified that her job duties consisted of typing, filing and various clerical tasks. Petitioner estimated that she spent six and one-half hours on the computer out of a seven and one-half hour workday. After working as a receptionist for approximately one year, Petitioner moved to Career Services and held the position of Career Services Specialist for approximately seven and one-half years. Petitioner was then the Assistant Director of Career Services for approximately four and one-half years, and, during the last two and one-half years of that time the Petitioner was the Acting Director of Career Services. Following that time, Petitioner had to take a medical leave of absence because of a heart condition. At the time of trial, Petitioner was still on medical leave. This heart condition is not work-related.

While working as a Career Services Specialist, Petitioner's regular work day was seven and one-half hours; however, she would often take work home with her. Petitioner testified that the job required a significant amount of data inputting into computers and that she would use her arms and hands approximately five and one-half hours per day. Petitioner's job also required her to give various presentations to students for such things as job placement, interviewing, preparation of resumes, etc. This required Petitioner to pack projectors, laptop computers, various publications, etc., and then take them to wherever the presentation was to be given, unpack them and then reverse the entire process when the presentation was completed. Petitioner testified that she is right hand dominant and would use her right hand and arm to a much greater degree than her left when performing all of her job tasks.

Petitioner testified when she became the Assistant Director that her job duties actually increased due, in part, to the fact that the staffing was significantly cut because of budget issues. Petitioner continued to actively use her hands and arms and she usually took work home with her three to five days per week, performing typing and data entry, lifting materials and files, etc. Petitioner estimated her computer use as being approximately four hours per day and hand writing to be approximately one and one-half to two hours per day. Petitioner testified that when she became the Acting Director, there was no real change in the physical demands of her job again, due in part to the fact that there were staffing issues due to the budget being cut once again.

Petitioner testified that she gradually began to experience symptoms in her right arm and elbow stating that she first noticed them some time in either 2008 or 2009. Petitioner did not seek any medical treatment at that time, but simply applied a heated bean bag to her elbow to relieve her symptoms on an as needed basis.

At trial, Respondent tendered the testimony of Keri Young, who is presently the Director of Career Services for Respondent. Young began working for Respondent in October, 2011, shortly after Petitioner went on medical leave. Prior to trial, Young had never met or seen the Petitioner. Young testified that Petitioner would have had a number of assistants available to her when she worked for Respondent; however, Young (who was present when Petitioner testified) could not opine as to whether anything Petitioner testified to was accurate or inaccurate.

On November 9, 2011, Petitioner was seen and evaluated by Dr. Dan Phillips who performed nerve conduction studies. In the information sheet completed by the Petitioner, she indicated that she had persistent pain in the right hand, wrist, forearm and elbow as well as numbness and tingling in both hands. The Petitioner stated that the symptoms began in the Summer of 2011 and she attributed them to years of typing and computer work. Dr. Phillips' report (which indicated that the referring physician was Dr. Paletta) stated that the nerve conduction studies were normal and did not indicate either cubital or carpal tunnel syndrome. On November 21, 2011, Petitioner was seen by Dr. Luke Choi (who is in practice with Dr. George Paletta). At that time, Petitioner complained of a two to three month history of right elbow pain and numbness in the palm, thumb and index finger. Petitioner informed Dr. Choi of her work duties including the fact that she was required to perform extensive computer work, typing, lifting and carrying files and a laptop to and from various work sites and that the pain would get progressively worse throughout the day. Dr. Choi examined the Petitioner and reviewed the nerve conduction studies and diagnosed her with lateral epicondylitis. Dr. Choi prescribed a cortisone shot and some physical therapy. In regard to causality, Dr. Choi opined that Petitioner's complaints were causally related to her work environment and at the repetitive nature of the work was sufficient to aggravate her symptoms.

Subsequent to Petitioner's appointment with Dr. Choi, Petitioner completed a Workers' Compensation Employee Notice of Injury on November 30, 2011. In this report Petitioner stated that she was right handed and that she had noticed irritation in the right elbow, forearm, wrist and hand for the past two years and that she did work with a computer and engaged in typing and use of the mouse for approximately 18 years.

Dr. Choi saw Petitioner on January 17, 2012, and recommended continued conservative treatment. Unfortunately, Petitioner's symptoms did not improve and when Dr. Choi saw her on June 5, 2012, he recommended that an MRI be performed. An MRI was performed on June 11, 2012, which revealed lateral epicondylitis with tendinosis and a partial tear of the common extensor tendon; low grade changes of medial epicondylitis with tendinosis; sprains of the radial and ulnar collateral ligaments; and subluxation of the ulnar nerve at the cubital tunnel. Dr. Choi saw Petitioner on August 10, 2012, and opined that she had plateaued in terms of conservative treatment. At that time, Dr. Choi recommended surgery consisting of an open lateral epicondyle debridement.

Dr. Choi was deposed on August 29, 2012, and his deposition testimony was received into evidence at trial. Dr. Choi's testimony was consistent with his medical reports in regard to his diagnosis, treatment recommendations and causality. In regard to causality, Dr. Choi specifically stated that Petitioner's work environment could have been an aggravating or contributing factor



to her symptoms. On cross-examination, Dr. Choi stated that he was aware of the fact that Petitioner was not working at the time of his initial exam of November, 2011, but that he was not certain as to exactly when she had ceased working. When he was informed that Petitioner ceased working sometime in October, 2011, he opined that the ongoing nature of her complaints even after cessation of work at that time did not impact or modified his opinion as to causal relationship.

At the direction of Respondent, Petitioner was examined by Dr. Anthony Sudekum on October 1, 2012. Dr. Sudekum reviewed medical records and job descriptions in conjunction with his examination of Petitioner. Dr. Sudekum agreed with Dr. Choi's diagnosis in that surgery was appropriate; however, Dr. Sudekum opined that Petitioner's work activities did not cause or contribute to the condition of lateral epicondylitis. Dr. Sudekum opined that rheumatoid arthritis or another type of rheumatologic condition may have been the cause of Petitioner's condition and thought that it was significant that Petitioner's sister had rheumatoid arthritis (as was noted in the family medical history completed by Petitioner and contained in Dr. Phillips' records). Dr. Sudekum further opined that the MRI scan did indicate a rheumatological condition because the radiologist described the condition as being degenerative in his report.

#### Conclusions of Law

In regard to disputed issue (E) the Arbitrator makes the following conclusion of law:

The Arbitrator finds Petitioner gave notice to Respondent within the time required by the Act.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator finds that the date of manifestation was November 9, 2011, the date alleged in the Application. Notice was given to Respondent on November 30, 2011, which is within the time limitation mandated by the Act. As noted herein, November 9, 2011, was the date that Petitioner had the nerve conduction studies performed by Dr. Phillips. It was at that time that Petitioner contributed the symptoms in her right upper extremity as being related to her work activities and it was the initial time that she sought medical care and treatment.

---

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to her right upper extremity as a result of her work activities.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator notes that Petitioner credibly testified at considerable length about her job duties. Petitioner's description of her job duties included a significant amount of data entry, typing, handwriting, packing and unpacking of various materials and taking work home with her on a regular basis, all of which required the repetitive use of her dominant right arm. Respondent's witness did not commence her employment with Respondent until after the Petitioner had ceased working there and could not testify about the accuracy or inaccuracy of Petitioner's testimony.

The Arbitrator finds the medical opinion of Dr. Choi regarding causality to be more credible than that of Dr. Sudekum. Dr. Choi testified that Petitioner's job duties were a causative and aggravating factor to the development of her right arm symptoms. The Arbitrator is not persuaded by Dr. Sudekum's opinion that Petitioner's condition is attributed to a rheumatologic condition.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of same.


Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Petitioner is entitled to prospective medical care including, but not limited to, the right arm surgery recommended by Dr. Choi.

In support of this conclusion the Arbitrator notes the following:

There was no dispute as to the reasonableness and necessity of this treatment because both Dr. Choi and Dr. Sudekum agreed that surgery is indicated in this case.



William R. Gallagher, Arbitrator

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF MADISON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Brandt,  
 Petitioner,

vs.

NO: 07 WC 53512

Ellinger & Winfield, Co.,  
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability/maintenance, permanent partial disability, vocational rehabilitation and §§19(k) and 19(l) penalties and §16 attorney fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 5, 2012 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$52,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAY 05 2014**

RWW:bjg  
 0-4/22/2014  
 046

*Ruth W. White*  
 Ruth W. White  
*Charles J. DeVriendt*  
 Charles J. DeVriendt  
*Daniel R. Donohoo*  
 Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**BRANDT, JOHN**

Employee/Petitioner

Case# 07WC053512

**14IWCC0336**

**ELLINGER & WINFIELD CO**

Employer/Respondent

On 7/5/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

5073 JOHNSTON LAW OFFICES PC  
BENJAMIN T STEPHENS  
420 S BUCHANAN  
EDWARDSVILLE, IL 62025

0771 FEATHERSTUN GAUMER POSTLEWAIT  
DANIEL L GAUMER  
PO BOX 1760  
DECATUR, IL 62525

STATE OF ILLINOIS )

)SS.

COUNTY OF Madison )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

**John Brandt**

Employee/Petitioner

v.

**Ellinger & Winfield Co.**

Employer/Respondent

Case # 07 WC 53512Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **May 23, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD      ☒ Maintenance      ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other **Vocational Rehabilitation Benefits**

## FINDINGS

On 11/8/07, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$47,857.16; the average weekly wage was \$920.33.

On the date of accident, Petitioner was 28 years of age, *single* with 2 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services. The parties stipulated that all medical bills have been paid.


Respondent shall be given a credit of \$60,909.94 for TTD, \$0 for TPD, \$0 for maintenance, and \$12,048.00 as a PPD advance for other benefits, for a total credit of \$72,957.94.


## ORDER

***SEE ATTACHED DECISION***

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

  
\_\_\_\_\_  
Date

JUL -5 2012

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN BRANDT,

Petitioner,

vs.

ELLINGER & WINFIELD CO.,

Respondent.

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**14IWCC0336**

No. 07 WC 53512

ADDENDUM TO ARBITRATION DECISION

Procedurally, this matter was previously tried on June 25, 2010 pursuant to Section 19(b) of the Act. The Arbitrator's award was entered July 30, 2010, and was appealed to the Commission for review. On July 20, 2011, the Commission modified his award in decision 11 IWCC 0713. Neither party appealed the Commission decision. The Commission's decision with the attached award of the Arbitrator was admitted as Arbitrator's Exhibit II as the law of the case to that point. See, e.g., *Help at Home vs. Illinois Workers' Compensation Commission*, 405 Ill.App.3d 1150 (4<sup>th</sup> Dist. 2010).

Prior to this hearing, the parties stipulated that in the event the Arbitrator did not find the petitioner should be awarded vocational maintenance, the Arbitrator would address permanent partial disability at this juncture rather than conduct an additional hearing on that issue. Furthermore, it was noted that under those circumstances, the petitioner requested an award under 8(d)2 and waived any claim to 8(d)1 benefits.

STATEMENT OF FACTS

This case involves an undisputed accident on November 8, 2007 causing low back injury with radiculopathy. The chronology of the medical treatment was laid out in detail in Arbitrator Nalefski's decision (Arb.II). The transcript of the prior proceedings was introduced as RX1. Briefly, the petitioner sought substantial conservative care and medication. When that did not produce relief, the petitioner underwent disc replacement surgery at L5-S1 performed by Dr. Raskas on August 12, 2008.

The petitioner thereafter underwent postoperative care with Dr. Raskas until February 9, 2009, when Dr. Raskas placed him at MMI and ceased treating him, noting subjective complaints in excess of the physical findings and noting the petitioner was apparently not taking the narcotic medication for which he was filling the prescriptions, based on a urinalysis which showed the medications were not in his system. The petitioner thereafter sought care with Dr. Shitut, who prescribed objective testing and

injections, which took place until August 14, 2009, at which time Dr. Shitut noted that the injection had not helped, and placed the petitioner at MMI. He did recommend a FCE, but no additional treatment.

The claimant was seen for a Section 12 examination with Dr. Daniel Kitchens on November 25, 2009. Dr. Kitchens opined the petitioner was capable of working full duty and required no further care.

The FCE was conducted on April 6, 2010. It placed the petitioner at the Light to Light-Medium Physical Demand Level. Multiple nonorganic signs were observed, however, and Dr. Kitchens' review of the FCE indicated that the FCE would not be deemed reliable.

Surveillance conducted on May 13, 2010, was introduced at the first trial, showing the claimant riding an ATV and moving without signs of impairment.

The original award of Arbitrator Nalefski found the petitioner to lack credibility, and noted multiple indications of symptom magnification and inappropriate drug seeking behavior based upon the medical treatment records. Arbitrator Nalefski ordered 86 & 2/7 weeks TTD, from 12-20-2007 through 8-14-2009, and denied vocational rehabilitation and maintenance benefits in favor of 30% man-as-a-whole disability. The Commission also noted credibility concerns, but modified the TTD award to extend through September 19, 2009 based on the trial stipulations and further vacated the permanency award, ordering the parties to secure a written vocational rehabilitation assessment pursuant to Rule 7110.10. See Arb. Ex. II. Following remand from the Commission, each party secured a vocational rehabilitation assessment.

Respondent's consultant, Bob Hammond, authored a report on September 12, 2011 which was introduced as RX4. Mr. Hammond concluded the petitioner was employable, but was not a good candidate for vocational assistance. Mr. Hammond reported that the claimant had not sought work on his own, that the claimant stated that he did not believe himself capable of employment, and had applied for Social Security Disability. Mr. Hammond also noted the documented drug seeking behavior, false statements to the physicians, and the petitioner's felony record.

Petitioner's vocational expert, June Blaine, met with the claimant on December 15, 2011 and thereafter authored a report on January 27, 2012, which was introduced as PX1. Ms. Blaine noted that he had not worked or sought work, and that the claimant was taking care of his young child at home. She concluded he could benefit from vocational services if he demonstrated a commitment to the process and recommended that he secure a GED and computer training courses. She made those recommendations to the petitioner at their original meeting, including delineating opportunities for GED classes beginning in January 2012 at a local community college.

At trial, the claimant noted he had checked in at his labor hall in 2010 and worked a day or two as a flagger on a road crew, but was laid off thereafter, asserting it was due



to the restrictions he was under. He had neither enrolled in the GED classes nor pursued the computer course. He asserted the January classes were full, but admitted he has not formally applied for admission to any other classes being offered. He has applied for Social Security Disability approximately 18-24 months prior to the date of trial in this matter and is presently awaiting a ruling; he testified that he had a doctor's evaluation pursuant to the directive of the SSDI administrative law judge scheduled for May 24, 2012, the day after this case went to hearing. He testified he had not applied for any jobs in the last six months and that during the day he is the primary caregiver for his two-year-old while his girlfriend works. He acknowledged a 2007 felony conviction.

### OPINION AND ORDER

#### Temporary Total Disability and Maintenance

Regarding temporary total disability, the Commission's decision in 11 WC 0713 ordered 91 & 1/7 weeks of TTD, being the period of December 20, 2007 through September 19, 2009. That period is therefore ordered at the applicable rate of \$613.55, for total liability of \$56,082.93. The respondent has previously paid \$72,957.94, and credit for the \$16,875.01 excess paid will be assessed against further benefits ordered.

Regarding maintenance benefits, the claimant requested benefits from June 25, 2010, through the date of trial. The Arbitrator notes that maintenance was requested at the Commission level from the FCE through the date of the first trial. The Commission denied such, finding his effort lacking in light of the guidance of *Roper v. Industrial Commission*, 349 Ill.App.3d 500 (5<sup>th</sup> Dist. 2004).

Even taking the claimant's testimony at face value, there has been a clear continuation of this substandard effort since the original trial. The claimant has not sought to improve his educational status; while he did not have the formal guidance of Ms. Blaine until December 2011, the availability and potential usefulness of a GED is effectively common knowledge. He has not sought to avail himself of such despite not having worked for over four years, and not having sought substantial medical care since August 2009. He admitted not having applied for any job of any sort in at least six months prior to the trial date, and no evidence he applied for any job since the June 2010 hearing was introduced save for the one instance discussed. This is less than reassuring, given that the controlling case of *National Tea Co. v. Industrial Commission*, 97 Ill.2d 424 (1983) notes a lack of motivation is an appropriate factor to consider in determining if any formal vocational maintenance is warranted. *Id.* at 433, internally citing *Lancaster v. Cooper Industries* (Me. 1978), 387 A.2d 5, 9.

Furthermore, this claimant's testimony cannot be taken at face value. Arbitrator Nalefski noted serious concerns with the petitioner's behavior in his original decision, particularly the petitioner's actions on December 8, 2007, where he presented at four (4) different emergency rooms to secure pain medication. The Commission further acknowledged even though they felt Arbitrator Nalefski's permanency assessment was

premature, the petitioner's "pain behavior and use of prescription drugs raise questions concerning the validity of his pain complaints and ability to work." Two of the petitioner's own medical providers, Dr. Raskas and Dr. Crancer, refused to continue treating the petitioner based on the petitioner's behavior, and Dr. Raskas specifically noted evidence of dishonesty regarding the petitioner's pain complaints and use of medication. The petitioner is also a convicted felon. This Arbitrator concurs with the prior factfinders in observing the petitioner's credibility to be lacking.

Moreover, while the petitioner testified he has not worked, it should be noted this lack of employment is not a new pattern exclusively based on his injury. The petitioner's union records of those hours he worked over the years prior to this injury were introduced as RX5, indicating a history of sporadic work at best, with his highest annual total being 338.5 hours and several years where he did not work at all.

In light of the above facts and circumstances, the petitioner's claim for vocational rehabilitation and maintenance is denied.

#### **Nature and Extent of the Injury**

The Arbitrator finds the petitioner's work-related accident culminated in the disk replacement surgery at L5-S1. The precise limitations faced by the claimant were extensively discussed by the physicians and are a matter of some dispute, as the Commission noted "questions concerning the validity of his pain complaints and ability to work." However, the vocational assessments had to be reviewed prior to a conclusive permanency assessment.

Having reviewed the evidence adduced at the first hearing, the vocational assessments, the claimant's testimony, and the Commission's decision, the Arbitrator finds the totality of the record supports a finding that the injuries sustained caused permanent loss of use to the petitioner's whole body to the extent of 25% thereof, as provided in Section 8(d)2 of the Act. Accordingly, the respondent shall pay the petitioner the sum of \$552.20/week for a further period of 125 weeks, producing overall liability of \$69,025.00. Against this amount the respondent shall have credit for the \$16,875.01 overpayment referenced above, for current liability of \$52,149.99.

14IWCC0337

STATE OF ILLINOIS )  
) SS.  
COUNTY OF COOK )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="Down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN TAYLOR, JR.,

Petitioner,

vs.

NO: 09 WC 5518, 09 WC 23141, & 10 WC 4829

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, temporary total disability, and medical expenses both current and prospective, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

*Findings of fact and conclusions of law*

1. Petitioner was employed as a bus operator for Respondent. The parties stipulated that on January 6, 2009, Petitioner sustained a work-related injury when an SUV driven by a supervisor ran over his right foot. Petitioner testified that the SUV remained on his foot "for two to three minutes."

14IWCC0337

2. Petitioner testified he felt an immediate throbbing pain and felt that his foot was swelling. He was told not to remove his boot and an ambulance was called. X-rays were taken at the emergency room and Petitioner was told to follow up with his general practitioner who referred him to Dr. French, a podiatrist.
3. Dr. French diagnosed a crush injury and recommended an MRI. After the MRI, Dr. French made the additional diagnosis of partial tears of the Achilles tendon. Petitioner had physical therapy and returned to work on May 5<sup>th</sup> or 6<sup>th</sup> of 2009.
4. On May 26, 2009, Petitioner testified he was on his route and noticed that his right leg and foot cramped when he applied brakes. He called in and requested assistance. He transferred his passengers to the next bus and awaited assistance. He again treated with Dr. French who released him to full duty on July 24, 2009 even though he was still treating Petitioner.
5. Petitioner also testified he continued to work until January 25, 2010. He began to experience swelling and numbness in his foot and ankle. Respondent sent an ambulance and took him to the emergency room. X-rays were taken and it was recommended Petitioner see an "orthopedic or vascular surgeon." Petitioner continued to treat with Dr. French who recommended an EMG.
6. Petitioner was examined by Dr. Mohan who ordered a repeat MRI. Dr. Mohan then ordered a functional capacity evaluation, after which he recommended Petitioner not return to work as a bus driver. Petitioner was referred to Dr. Jain, a pain specialist, who prescribed a sympathetic nerve block injection, which was performed by Dr. Anwar on March 18, 2011. After another injection, Dr. Anwar recommended a trial spinal cord stimulator. Petitioner testified the nerve blocks relieved a lot of the pain and swelling and the spinal cord stimulator really helped. After the trial, Dr. Anwar recommended permanent implantation.
7. Petitioner testified that currently he has moderate pain (6-7/10), and has swelling if he walks or stands a lot. He can walk and drive short distances. He just started wearing a shoe and it is uncomfortable wearing it all day. Petitioner currently takes Vicodin and Oxycodone, but he would rather have the stimulator. He cannot take those medications and drive a bus. He wanted to return to work driving a bus for Respondent.
8. On cross, Petitioner testified he does not drive when he is on his medication. However he does drive and he has seen a video of himself driving and walking. It had been awhile since he talked with anybody at CTA about returning to work. Petitioner did not fill out accident reports for the incidents on May 26, 2009 or January 25, 2010. He was told to use the same claim number from the initial accident.
9. Petitioner agreed that he did not have surgery for his foot injury.

14IWCC0337

10. Medical records show that on January 6, 2009, Petitioner presented to the emergency room after an SUV ran over his right foot. He complained of 8/10 pain. X-rays showed only a tiny calcaneal spur but no fracture or dislocation. Petitioner was given Motrin and released.
11. On February 16, 2009, Petitioner presented to Dr. French with foot and ankle pain after crush injury. He was on crutches and had a cast boot. Besides the crush injury, Dr. French diagnosed Achilles and Peroneal tendonitis. He prescribed Vicodin, Narposyn, and ordered an MRI.
12. On March 5, 2009, Dr. French noted the MRI showed Achilles tendonitis or a partial tear. Dr. French included synovitis and capsulitis in his diagnoses.
13. On May 4, 2009, Dr. French released Petitioner to work full duty.
14. On May 28, 2009, Petitioner returned to Dr. French and reported some increased pain with activity. About three days earlier he experienced pain, swelling, and cramping to the right foot. He went to the emergency room where x-rays and Doppler were negative. Dr. French prescribed Ibuprofen, Medrol Dosepak, and Darvocet.
15. On September 10, 2009, Dr. French noted Petitioner was back to work and doing well and that the Achilles tendonitis was resolving.
16. On February 26, 2010, Petitioner reported to Dr. French that he had increased numbness with activity. Dr. French prescribed an EMG, which was normal.
17. On March 17, 2010, an EMG was taken for pain, swelling, and throbbing of his right foot and ankle. The EMG was normal.
18. On April 1, 2010, Petitioner still complained of numbness despite the normal EMG. Dr. French referred Petitioner to Dr. Mohan for a neurological consultation.
19. On May 4, 2010, Petitioner presented to Dr. Mohan for evaluation on referral from Dr. French. Dr. Mohan diagnosed crush injury to the peroneal nerve and possibly the tendon, and possible causalgia pain due to nerve and tissue injury. He ordered an MRI.
20. On May 13, 2010, an MRI of the right foot showed diffuse great toe cellulitis with small volume first MTP joint diffusion, forefoot bony dysplasia, but no acute bony defect or signs of internal derangement. An MRI of the ankle was normal.

21. On June 1, 2010, Dr. Mohan noted the MRI was essentially normal. However, because of the problem with his right foot, he could not foresee Petitioner continuing to work as a bus driver. Petitioner may need a pain specialist.
22. On June 21, 2010, Petitioner had a functional capacity evaluation ("FCE") at Athletex, where he previously had physical therapy. The test was determined to be valid. Petitioner showed he could only ambulate for four minutes before stopping due to cramping. He had limited mobility and tolerance to standing, squatting, and sitting which limits his ability to work as a bus driver, which involves a medium level of exertion. He would not qualify for sedentary work because of discomfort sitting.
23. On August 24, 2010, Petitioner had another FCE at Accelerated. The test was also determined to be valid. Petitioner was able to function at a light level of exertion and showed no difficulty in sitting for prolonged periods. He was capable of performing all the essential functions of a bus driver.
24. On November 24, 2010, Petitioner presented to Dr. Jain for evaluation of diagnoses of complex regional pain syndrome ("CRPS"), lumbosacral radiculopathy, and cervical radiculopathy. Petitioner reported significant burning and shooting pain in the leg and numbness below the knee. Symptoms were aggravated by prolonged sitting. Dr. Jain indicated he had discoloration, allodynia, and hyperpathia in the right foot. Dr. Jain thought the diagnosis of CRPS was "pretty obvious." He would administer sympathetic nerve blocks to relieve the symptoms of CRPS.
25. On December 17, 2010, Dr. Jain noted the MRIs showed a disc herniation at L5-S1 on the right and bulges throughout the cervical spine. "Endeavoring on any treatment for possible CRPS in the right" leg, Dr. Jain "would like to address radicular symptoms." He would administer injections to the lumbar and cervical spine. Petitioner would remain off work.
26. On July 21, 2011, Dr. Jain noted "based on the diagnosis of [CRPS], neuropathic pain, and his aggravation of pain in the right foot which has developed from multiple surgeries which were done after he had the accident, as well as melanoma excision as well as acupuncture which was also done on his right foot which have aggravated the symptoms of reflex sympathetic dystrophy ("RSD") from the crush injury which the patient suffered on January 6, 2009." Petitioner was cleared by the psychologist and was a good candidate for a trial spinal cord stimulator. It was implanted.
27. On September 1, 2011, Petitioner presented for removal of the temporary stimulator. Petitioner reported greater than 80% reduction in pain. Petitioner wanted to proceed with the permanent implantation.

28. On August 13, 2012, Dr. Anwar testified by evidence deposition. He is board certified in pain management and treats patients with neuropathic pain after injuries.
29. When Dr. Anwar first examined Petitioner on March 18, 2011, his right foot was discolored and painful to the touch. Petitioner had "extensive surgery" but the records were not available. Dr. Anwar noted that Dr. Jain's evaluation suggested CRPS. Dr. Anwar administered a sympathetic nerve block injection to decrease Petitioner's neuropathic pain. The injection was administered at the L2-3 level because that is where the plexus is. This is the first line of treatment when there is any doubt about the diagnosis of CRPS. After that he proceeded with radiofrequency neurolysis in which the nerves are also heated to decrease their sensitivity. The treatment provided significant relief, but it lasted only a few days.
30. Dr. Anwar recommended a spinal cord stimulator trial. If the patient gets more than 50% relief and improvement in function, the patient is a candidate for permanent implantation. Petitioner received greater than 80% relief, so Dr. Anwar thought he was a candidate for permanent implantation.
31. Dr. Anwar believed Petitioner has CRPS because "there's injuries, his history, his physical exam, everything tells us he has neuropathic pain which is CRPS." He further elaborated "when the patients have these crush injuries, it's not easy to diagnose this pain," but based on the physical complaints of the burning and sensitivity to touch as well the appearance of the foot, Dr. Anwar concluded he had CRPS. Dr. Anwar noted that Petitioner did not have the symptoms of late stage CRPS like mottling of the skin, nail problems, muscle atrophy, or bone loss.
32. Dr. Anwar opined that Petitioner's condition would worsen without treatment. He also opined that Petitioner's CRPS was causally related to his accident. He based that opinion on the initial trauma, which is a major cause of CRPS, the surgery on the ankle, and the removal of the melanoma on the ankle. These three multiple traumas to the foot contributed to his developing CRPS.
33. Dr. Anwar was not certain whether or not Petitioner could return to work as a bus driver. He might be able to work for a few hours and then rest with no lifting. However, Dr. Anwar would have to discontinue the opiate pain relievers. Petitioner is able to walk and drive despite his condition. His condition is at a very early stage. Dr. Anwar did not know why an EMG/NCV would be ordered to diagnose CRPS "because these are not nerves which are damaged."
34. On cross examination, Dr. Anwar he did not believe Petitioner received a fracture at the time of the accident. He was not aware if Petitioner had returned to work at some point prior to the time he first saw him more than two years after the accident. It appears that

Dr. Anwar did not review any prior medical records. He did not think it was unusual for Petitioner to be able to drive or walk because he was not at 3<sup>rd</sup> degree RSD.

35. On redirect, Dr. Anwar testified the crush injury alone would be sufficient to cause CRPS; crush injuries are one of the most common causes of the condition. Throughout his treatment of Petitioner, Dr. Anwar thought he was being truthful. He did not think Petitioner was malingering.
36. On March 8, 2010, Petitioner presented to Dr. Holmes for a Section 12 medical examination. Dr. Holmes reviewed treatment notes of Mercyworks, the emergency rooms, and Dr. French through February 4, 2010. His examination of Petitioner was benign with no swelling or atrophy indicating Petitioner was using both legs equally. "Therefore his physical examination does not correlate with the degree of symptoms and pain the patient reports, nor does it correlate with the medications that he is on this time in terms of being used for pain relief." Dr. Holmes recommended an EMG to rule out nerve damage and an FCE.
37. On July 26, 2010, Petitioner returned to Dr. Holmes for another Section 12 examination. Petitioner's chief complaint was swelling in the foot and numbness in the 2<sup>nd</sup> and 3<sup>rd</sup> toes, burning on the bottom of his foot and across the anterior aspect of the ankle, and some Achilles pain. Petitioner stated he walked with a limp. Dr. Holmes reviewed additional records from Dr. French through June 22, 2010. Upon examination, Dr. Holmes noted no significant swelling or atrophy indicating disuse or preferential use of the foot. "Therefore, his current condition is not supported by any objective parameters that [Dr. Holmes] from review of the records and examination today." If somebody had such pain, "it would almost obligatory that the person would have some atrophy on the affected side." He did not believe Petitioner needed any additional treatment and there was no reason why he could not return to work as a bus driver.
38. On September 9, 2010, Dr. Holmes reviewed an EMG, MRI, and FCE. He noted the EMG and MRI were essentially normal. He reiterated his opinion that Petitioner could return to work as a bus driver.
39. On April 5, 2012, Petitioner presented to Dr. Bello for another Section 12 examination. Petitioner continued to complain of constant mild to moderate right foot pain which was worse with activity. He reported excellent results with the spinal cord stimulator. Petitioner "denied any specific swelling, warmth, skin color changes, or difficulty wearing a shoe on the affected limb." Petitioner stated he could not currently perform his job as bus driver. Dr. Bello's examination appeared to be normal.
40. Dr. Bello opined that the signs and symptoms did not demonstrate and were not consistent with a diagnosis of RSD. He also found no evidence of an inflammatory process. He opined that Petitioner was at MMI, there was no evidence supporting a



diagnosis of CRPS, there was no need for a spinal cord stimulator, and Petitioner could return to full duty work. There was no evidence of malingering but the description of pain was out of proportion to the clinical examination.

41. Respondent submitted into evidence a surveillance video from March 22, 2012 and March 31, 2012. It shows Petitioner wearing dress shoes, walking, driving, and climbing stairs. He does not appear to be limping or being in any kind of distress.

In finding Petitioner proved causation of a current condition of ill being, the Arbitrator gave greater weight to Petitioner's treating doctors than Respondent's IMEs regarding his diagnosis and Petitioner's ability to work as a bus driver.

In this case, the Commission finds the opinions of the Section 12 medical examiners persuasive. Both Drs. Holmes and Bello found absolutely no objective evidence to support the diagnosis of CRPS such as discoloration, swelling, or atrophy. In addition, Drs. Jain and Anwar based their diagnosis of CRPS at least partially on the assumption that Petitioner had "extensive surgery" on his foot after the accident causing considerably greater trauma to the area. That assumption is simply not borne out in the medical records and was specifically contradicted by Petitioner's testimony. Finally, it is clear that Drs. Jain and Anwar accepted Petitioner's subjective complaints at face value. However, Petitioner's complaints are rebutted by the surveillance video which shows him walking, driving, and climbing comfortably in hard shoes.

Therefore, the Commission concludes Petitioner is not in need of prospective medical treatment and was able to return to work as a bus operator as of the date of Dr. Holmes second Section 12 medical report. Therefore, the Commission modifies the Decision of the Arbitrator and vacates the award of prospective medical treatment and terminates temporary total disability benefits after July 26, 2010.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$383.79 per week for a period of 40 3/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical expenses for Petitioner's treatment and care thus far incurred under §8(a) of the Act, pursuant to the applicable fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0337

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 05 2014

RWW/dw  
O-9/19/13  
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*Ruth W. White*  
\_\_\_\_\_  
Ruth W. White  
*Charles J. DeVriendt*  
\_\_\_\_\_

Charles J. DeVriendt

*Michael J. Brennan*  
\_\_\_\_\_  
Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**TAYLOR, JOHN**

Employee/Petitioner

Case# **09WC005518**

09WC023141

10WC004829

**CHICAGO TRANSIT AUTHORITY**

Employer/Respondent

14IWCC0337

On 11/19/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4595 WHITESIDE & GOLDBERG LTD  
JASON M WHITESIDE  
155 N MICHIGAN AVE SUITE 540  
CHICAGO, IL 60601

0515 CHICAGO TRANSIT AUTHORITY  
J BARRETT LONG  
567 W LAKE ST  
CHICAGO, IL 60661

STATE OF ILLINOIS )

)SS.

COUNTY OF Cook )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)(18))        |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

19(b)

**14IWCC0337**

**John Taylor**  
Employee/Petitioner

Case # 09 WC 005518

Consolidated cases: 09 WC 23141

10 WC 4829

**Chicago Transit Authority**  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Chicago**, on **09/18/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. X Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. X Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. X Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. X Is Petitioner entitled to any prospective medical care?
- L. X What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance X TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. X Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On the date of accident, January 6, 2009, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$29,935.36; the average weekly wage was \$575.68.

On the date of accident, Petitioner was 38 years of age, *single* with 1 dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$28,392.78 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$28,392.78.

Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

## ORDER

Petitioner was temporarily totally disabled for a period of 14-2/7 weeks commencing 1/26/09 through 5/5/09 and a further period of 137-6/7 weeks commencing 1/25/10 through 9/10/12 for a total of 152-1/7 weeks at the TTD rate of \$383.79 per week

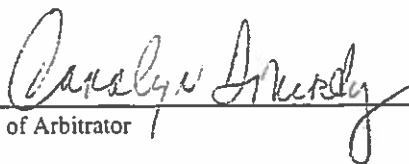
Respondent is to pay Petitioner's reasonable and necessary medical expenses incurred in the care and treatment of his condition pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Respondent shall pay for the prospective medical care and treatment recommended and prescribed by Dr. Anwar pursuant to Section 8(a) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

11/19/12  
Date

FINDINGS OF FACT

Petitioner, John Taylor, Jr., testified that he began working for Respondent, C.T.A., on or about September 22, 2008, as a bus operator. On January 6, 2009, Petitioner indicated that he worked for Respondent as a bus operator and was assigned to work the evening shift. Petitioner arrived at work 30 minutes prior to his start time on the evening of January 6, 2009 at the bus garage to fill out his trip sheets prior to boarding a bus that would take him to the start of his route. Petitioner indicated that he was walking through the parking lot owned by the Respondent with a co-worker, Diane. One of Petitioner's supervisors, James Wilson, indicated that he would give a ride to Petitioner and Diane. Diane entered the back seat of the supervisor's vehicle, described by Petitioner as a Ford Escape, and Petitioner walked around to the other side of the supervisor's vehicle. Before Petitioner could enter the Ford Escape, James Wilson ran over Petitioner's right foot.

Petitioner testified that James Wilson backed up the Ford Escape onto his right foot, and upon hearing Petitioner scream, Mr. Wilson stopped the vehicle on top of Petitioner's right foot. After a few minutes, Mr. Wilson removed the vehicle from on top of Petitioner's foot. Petitioner indicated that he felt immediate pain and swelling in his right foot. Mr. Wilson called his supervisor who arrived and contacted Chicago Fire Department to send an ambulance for Petitioner.

Petitioner was taken by ambulance to Holy Cross Hospital with complaints of right foot swelling and pain. PX 2. A history was taken at Holy Cross Hospital of a crush injury to the right foot of Petitioner. PX 3, pg. 18. Petitioner complained of a burning sensation to his foot. PX 3, p. 21. X-rays were performed, which were negative for fractures or dislocations. PX 3, pg. 27. Petitioner was prescribed Motrin, crutches, discharged and instructed to follow-up with his physician. PX 3, pp. 20, 23.

Upon being discharged, Petitioner continued his medical care with Dr. Brian French, a podiatrist. PX 4. An initial examination was held on February 16, 2009, whereby Dr. French recorded a history of a crush injury on January 6, 2009, which produced pain and swelling to the right foot. PX 4, p. 6. Petitioner complained of pain with weight bearing to the right foot. Dr. French performed a physical examination, which revealed pain to the Achilles tendon, as well as pain to the lateral aspect of the heel and lateral calcaneal cuboid joint. (PX 4, p. 6) Dr. French diagnosed Petitioner with Achilles tendonitis, Peroneal Tendonitis and status post right foot and ankle crush injury. (PX 4, p. 6) Dr. French also prescribed Vicodin, Naprosyn, and MRI of the right foot and ankle, and a follow-up in 1 week. (PX 4, p. 6)

On March 5, 2009, Respondent sent Petitioner to Section 12 examination with Dr. Benjamin Goldberg. (RX 4) Dr. Goldberg took a consistent history from Petitioner, in that his foot was crushed during a work-related injury on January 6, 2009 and that it was difficult to walk but that he could "hobble along" using a CAM boot. Dr. Goldberg reviewed the treatment records and performed a physical examination, whereby mild swelling about the mid and hind foot was noted along with tenderness over the metatarsal head and the heel. Dr. Goldberg recommended Petitioner take off the CAM boot and start walking in a regular shoe. Pending new x-rays showing no fractures and the results of the MRI, he indicated that Petitioner should be at MMI in

two months and that he should be able to tolerate weight bearing on the foot. Dr. Goldberg diagnosed Petitioner as status post crush injury and indicated that Petitioner was not in need of further treatment pending the x-ray results. RX 4. He further noted that Petitioner could not drive a bus at that time due to the fact that he needed his right foot to drive and that his foot was "clearly abnormal" at that point. RX 4.

Petitioner also saw Dr. French on March 5, 2009. Dr. French reviewed the MRI of the right foot, which was performed on March 3, 2009 at MRI of River North. (PX 4, p. 40) Dr. French interpreted the MRI to show Achilles tendonitis or partial tear on the right Achilles tendon area. PX 4, p. 7. Dr. French recommended physical therapy, medication, functional orthotics and for Petitioner to remain in a cast walker pending physical therapy results. PX 4, p. 7. On March 16, 2009, DR. French noted that Petitioner was undergoing physical therapy and that he related a decrease in pain to his right foot and ankle and right Achilles area. On exam, he noted a decrease in edema and mild pain over the Achilles tendon area. Petitioner was diagnosed with Achilles tendonitis and synovitis and told to continue PT. PX 4, p. 8.

Dr. French continued to treat Petitioner for his right foot injury, eventually prescribing orthotics for Petitioner. On April 20, 2009 and May 2, 2009, Dr. French noted that Petitioner had finished physical therapy and was using an orthotic to his right foot. On April 20, 2009, Dr. French noted Petitioner's complaint of increased pain and swelling to his right foot. PX 4, p. 10. On examination, pain was mild and edema was minimal. Petitioner was released to return to work on 5/4/09. PX 4, p. 10. On May 2, 2009, Petitioner again noted mild pain and minimal edema along with a decrease in pain and swelling to the right foot. PX 4, p. 11. Petitioner was again released to return to work as of 5/4/09.

Petitioner testified that he returned to work for Respondent in May of 2009, and that on May 26, 2009, he was operating a bus for the Respondent when he felt immense pain and swelling in his right foot. Petitioner contacted the Respondent, and indicated that he would need to have a replacement driver sent to continue his bus route. Respondent sent a substitute bus driver, and Petitioner was taken to University of Illinois Hospital. PX 5. Petitioner presented with complaints of right foot and ankle injury following a crush injury earlier that year. PX 5, p. 7. X-rays were taken of the right knee, tibia/fibula and ankle, which were all negative. PX 5, p. 8. Petitioner was released with a diagnosis of a foot injury and an ankle sprain. PX 5, p. 8.

Petitioner returned to see Dr. French on May 28, 2009, and related an increase in pain complaints related to the right foot following his return to work 3 weeks earlier. Petitioner also reported an increase in pain, swelling and cramping to the right foot around May 26, 2009. (PX 4, p. 12). Dr. French noted mild edema and pain to the foot along with mild heat to the right ankle area. Petitioner was prescribed pain medication including a Medrol dose pak and Darvocet. He was also prescribed additional physical therapy, which was performed at Athletex. (PX 6) According to the Athletex medical records, Petitioner began physical therapy on June 10, 2009, and received approximately 8 therapy sessions until June 22, 2009. (PX 6, p. 11) On 7/16/09, Petitioner was released to full-duty work by Dr. French as of 7/24/09. PX 4, p. 16. He was to continued PT and the pain medications. Petitioner then completed a physical therapy program with Athletex on August 12, 2009. PX 6, p. 15.



In September 2009, Dr. French noted that Petitioner had returned to work and was "doing well." Dr. French noted no edema, erythema, or joint effusions and no pain to the Achilles tendon with palpation. There was no pain noted to the ankle, subtalar or mid-tarsal joint at that time. Petitioner was to return "as needed." PX 4, p. 18.

Petitioner testified that he returned to work, but continued to have pain and swelling intermittently with his right foot, right ankle and right leg. By December 31, 2009, Petitioner began to experience an increase of pain to the arch and heel of his right foot. (PX 4, p. 19). By this point, Petitioner had been back to work, frequently using his right foot to operate the gas pedal of his bus throughout the work day. Dr. French performed an injection of Kenalog into Petitioner's right heel at the December 31, 2009 visit for pain management. (PX 4, p. 19)

Petitioner testified that on January 25, 2010, he was again operating a bus for the Respondent, on 55<sup>th</sup> street when he felt numbness and tingling in his right foot. Petitioner contacted the control department for Respondent, who in turn contacted Petitioner's supervisor, who called an ambulance, and took Petitioner to Jackson Park Hospital. Petitioner reported a history of accident about one year prior when Petitioner sustained a crush injury to his right foot. (PX 7, p. 9) Petitioner was treated and then instructed to follow-up with an orthopedic and/or a vascular surgeon. (PX 7, p. 6).

Petitioner returned to see Dr. French on January 28, 2010 and February 4, 2010, who indicated that Petitioner's pain had decreased since he was taken off-work following the January 25, 2010 incident. (PX 4, p. 22) Dr. French provided Petitioner an injection into his foot and recommended an EMG. (PX 4, p. 22 & 23).

Petitioner was sent for a Section 12 examination with Dr. George Holmes, which occurred on March 8, 2010. Dr. Holmes concluded that Petitioner sustained a crush injury to the right foot. RX 5. Dr. Holmes indicated that Petitioner's "physical examination was benign demonstrating no swelling or atrophy indicating that both lower extremities are being used equally. Therefore, his physical examination does not correlate with the degree of symptoms and pain the patient reports, nor does it correlate with the medications that he is on at this time in terms of being used for pain relief. The onset of pain appears to be cause-related to the incident of January 2009. However, the patient's current condition is essentially benign demonstrating a normal examination. I am having a difficult time correlating of his current symptoms with the original injury based upon the objective studies thus far." Dr. Holmes also recommended an EMG to determine underlying nerve damage as well as an FCE to determine a function level.

The EMG was performed at Holy Cross Hospital on March 17, 2010 and reviewed by Dr. French on April 1, 2010. (PX 3, p. 12) Dr. French interpreted the EMG as normal and referred Petitioner to Dr. Mohan for a consultation based on Petitioner's continued complaints of pain and numbness to the right foot and lower right extremity with activity and driving for an extended length of time. (PX 4, p. 29)

Dr. Mohan examined Petitioner on May 4, 2010, and noted Petitioner had weak and painful range of motion of his flexors and extensor of the right foot. (PX 8, p. 6) Dr. Mohan diagnosed Petitioner as having a crush injury of the distal part of the peroneal nerve and possibly involving



the peroneal tendon, as well as causalgia pain due to nerve and tissue injury. (PX 8, p. 6) Dr. Mohan recommended an MRI of the right foot and ankle and reviewed the MRI with Petitioner on June 1, 2010. (PX 8, p. 4) Dr. Mohan indicated that the MRI was normal, but that Petitioner was having difficulty putting weight on the right foot and painful range of motion of the right foot. (PX 8, p. 4) Dr. Mohan indicated that Petitioner would not be able to return to work as a bus driver given the condition of his foot and may need to see a pain specialist. (PX 8, p. 5)

An FCE was performed on June 21, 2010, at Athletex. (PX 9) The FCE summary indicated that the test was valid and that Petitioner gave good effort throughout the two-day exam. (PX 9) Throughout the exam Petitioner demonstrated deficits on the right ankle and foot and was only able to ambulate for 4 minutes due to cramping of the right calf. (PX 9, p. 5) The results of the FCE indicated that Petitioner does not qualify to return to work at the sedentary level because of the discomfort that occurs when sitting, which would make it difficult to drive a bus. (PX 9, p. 5)

On July 26, 2010, Respondent sent Petitioner to see Dr. George Holmes for a second Section 12 evaluation. (RX 5) Dr. Holmes reviewed medical records generated from the time of the initial exam on March 8, 2010 and the second exam. Dr. Holmes examined the Petitioner and concluded that Petitioner's objective findings did not match his subjective complaints and that Petitioner could return back to work as a bus driver. Dr. Holmes noted that the MRI and the EMG did not show structural damage to the right foot and that the exam did not show any swelling or atrophy that would be consistent with disuse of the foot or preferential use of the right foot. Dr. Holmes did not see a justification for ongoing treatment based up a lack of any objective measures. Specifically, he did not recommend pain blocks or cortisone injections. Again, he recommended an FCE and determined that he had no basis to restrict Petitioner from working at his normal job of bus driving. Dr. Holmes did not have the June 21, 2010 FCE results at this visit. (RX 5)

Petitioner was examined by his treating physician, Dr. French, on July 27, 2010, and reviewed the FCE report. (PX 4, p. 35) Based on the report, Dr. French referred Petitioner to Dr. Jain for pain management. (PX 4, p. 35) Petitioner testified that in the interim he attended another FCE scheduled by Respondent at Accelerated Rehabilitation Centers. (PX 10). Petitioner attended this examination on August 24, 2010, and the summary indicated that Petitioner gave maximum performance and that the examination was valid. (PX 10, p. 2) The report indicates that Petitioner was capable of functioning at the light category of work and could return to work as a bus operator. (PX 10, p. 2-3)

On September 9, 2010, Dr. George Holmes issued a third report and reviewed only the August 24, 2010 FCE. (RX 5) Based strictly on this report, Dr. Holmes recommended Petitioner return to work full-duty as a CTA bus driver. (RX 5). Dr. Holmes did not mention a review of the June 21, 2010 FCE.

Petitioner continued to treat with Dr. French, who documented pain complaints to the distal forefoot, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> metatarsal area. (PX 4, p. 37) Dr. French reiterated his recommendation that Petitioner treat with a pain specialist and diagnosed Petitioner with neuropathy. (PX 4, p. 37) Dr. French's last examination of Petitioner was on October 28, 2010, which documented the

same pain complaints and a recommendation for continued use of Vicodin and a referral for a pain specialist. (PX 4, p. 38)

Petitioner first saw Dr. Jain on November 24, 2010, for an initial consultation. (PX 11, p. 4) Dr. Jain took a history of a crush injury to the right foot on January 6, 2009, when a Ford Escape ran over his right foot. (PX 11, p. 4) Dr. Jain noted Petitioner to have burning, throbbing and shooting type pain with some aching and tingling in his right foot. (PX 11, p. 4) Dr. Jain examined Petitioner and noted discoloration in the right foot, hyperpathia and a disparity when compared with the left foot. (PX 11, p. 4) Dr. Jain noted that Petitioner was not working and had not worked since January 24, 2010. Dr. Jain diagnosed Petitioner with "a pretty obvious case" of chronic regional pain syndrome (CRPS) and recommended aggressive treatment, particularly right lumbar paravertebral sympathetic blocks. (PX 11, p. 6) Dr. Jain indicated that Petitioner's current complaints were directly related to the January 6, 2009 accident, and instructed Petitioner to remain off-work. (PX 11, p. 6)

Petitioner's next appointment with Dr. Jain was on December 17, 2010, whereby Dr. Jain recommended therapy be re-instated, and that Petitioner undergo a series of injections. (PX 11, p. 9) Petitioner began therapy at Rapid Rehab of Illinois on December 27, 2010, and attended about four physical therapy visits. (PX 13) Petitioner was then referred by Dr. Jain to his colleague, Dr. Zaki Anwar, for further pain management. (PX 15)

Dr. Anwar initially examined Petitioner on March 18, 2011, and took a consistent history of an accident on January 6, 2009, whereby Petitioner's right foot was crushed and run over by a Ford Escape. (PX 15, p. 3) Dr. Anwar performed a physical examination and noted discoloration of the right foot, allodynia and diminished pin prick in the L5 distribution compared with the left side. (PX 15, p. 4) Dr. Anwar diagnosed Petitioner with neuropathic pain syndrome of the right lower extremity, CRPS, and reflex sympathetic dystrophy. (PX 15, p. 4) Dr. Anwar also performed a lumbar sympathetic plexus block at L2 and L3 at that office visit and instructed Petitioner to remain off-work. (PX 15, p. 5)

Another sympathetic block was performed on April 1, 2011. (PX 19, p. 19) Petitioner returned to see Dr. Anwar on April 7, 2011 and reported significant relief from the previous injections, in that the burning, aching and throbbing pain in the right side of his leg subsided somewhat. (PX 15, p. 5) Dr. Anwar indicated that based upon Petitioner's development of CRPS over the course of the past two years (since the accident on January 6, 2009) and the neuropathic pain in his right lower extremity, Petitioner was a candidate for a trial spinal cord stimulator. (PX 15, p. 9) Dr. Anwar felt that rather than continue to perform injections, which provided Petitioner with a significant relief, Petitioner would receive a more than 50% relief from a spinal cord stimulator. (PX 15, p. 9) Petitioner was also instructed to remain off-work. (PX 15, p. 10)

Dr. Anwar performed a third radiofrequency ablation at L2 and L3 on July 8, 2011. (PX 15, p. 15) Petitioner was then referred to Dr. Khan for psychiatric evaluation prior to performing a trial spinal cord stimulator implantation. (PX 15, p. 17-18) Dr. Khan indicated that there were no psychological issues for Petitioner and that Dr. Anwar could proceed with the trial spinal cord stimulator. (PX 15, p. 18) Dr. Anwar reviewed the psychiatric assessment with Petitioner on

July 13, 2011 and scheduled the trial spinal cord stimulator implantation for August 25, 2011. (PX 15, p. 17)

Dr. Anwar performed the implantation of the trial spinal cord stimulator on Petitioner as planned on August 25, 2011. (PX 15, p. 23). Dr. Anwar indicated that during this procedure, two electrodes or leads are inserted into the spinal cord in such a way as to provide an electrical stimulation from the spinal cord in the leg. (PX 19, p. 28) This will provide Petitioner with relief from the pain, in that it changes the pain from a burning or throbbing pain sensation to some other altered sensation that is acceptable to Petitioner. (PX 19, p. 29)

Petitioner returned to see Dr. Anwar for removal of the trial spinal cord stimulator on September 1, 2011, and reported an 80% reduction in his symptoms of throbbing, burning and aching pain in his right foot and leg. (PX 15, p. 25) Based upon the reduction in pain complaints, Dr. Anwar recommended a permanent spinal cord stimulator be implanted. (PX 15, p. 25) By the next appointment with Dr. Anwar on December 14, 2011, the permanent implantation of the spinal cord stimulator had not been approved by Respondent. (PX 19, p. 32) Dr. Anwar recommended continuation of radiofrequency ablations to relieve Petitioner's pain while awaiting approval of the trial cord stimulator. (PX 19, p. 33) A radiofrequency neurolysis with sympathetic block was performed on December 16, 2011, February 3, 2012, April 20, 2012 and May 30, 2012. (PX 15, p. 33-48) Petitioner continued to report relief from his pain complaints to Dr. Anwar following the injections and expressed a desire to undergo the spinal cord stimulator permanent implantation. (PX 15)

RX 7 is a video offered by Respondent with surveillance of Petitioner on March 22, 2012 and March 31, 2012. The Arbitrator notes Petitioner is walking and driving without apparent difficulty.

Dr. Anwar gave his deposition in this matter on August 13, 2012. Dr. Anwar indicated that he is board certified in pain management, and treats clients with crush injuries and RSD, or neuropathic pain following an injury. (PX 19, p. 6). Dr. Anwar reviewed Petitioner's history, and indicated that Petitioner was suffering from CRPS as a result of the January 6, 2009 accident. (PX 19, p. 39-40). Dr. Anwar based his opinion upon his physical examination of Petitioner, Petitioner's complaints of pain, his physical presentation of discoloration and allodynia as well as the history of injury on January 6, 2009. (PX 19, p. 40). Petitioner's pain complaints were valid in that the damaged nerves can cause sympathetic mediated pain because the blood supply is not there for the nerves. (PX 19, p. 14). Dr. Anwar determined that Petitioner was in the early stage of RSD and that aggressive treatment could stop the progression. PX 19, p. 41. Petitioner was able to walk on his right foot and drive. The video surveillance was reviewed by Dr. Anwar and he noted that CRPS patients can walk and do all normal activities but they do it with pain in the affected extremity. PX 19, p. 45,55.

Dr. Anwar was asked how Petitioner could have a normal EMG/NCV study and still have CRPS. Dr. Anwar indicated that CRPS is difficult to diagnose with objective tests because after a crush injury such as Petitioner suffered, the smaller nerves can be damaged and these smaller nerves will not be visible on an EMG or nerve conduction study. (PX 19, p. 14) That is why it is not recommended that an EMG/NCV test be performed on CRPS patients such as Petitioner. (PX

19, p. 46) Also, the EMG itself can aggravate the pain associated with the CRPS. (PX 19, p. 48) Dr. Anwar again testified that he does not recommend an EMG for RSD testing. PX 19, p. 48. The subjective complaints of the patient must be considered in order to diagnose CRPS and treat the condition appropriately. Dr. Anwar felt Petitioner's subjective pain complaints were valid and that they supported a diagnosis of CRPS. Dr. Anwar also felt that Petitioner was not malingering. (PX 19, p. 68).

Respondent sent Petitioner to one final examination by Dr. Alfonso E. Bello on April 5, 2012. (RX 6) Dr. Bello specializes in Rheumatology and is Board Certified. (RX 6) Dr. Bello performed a physical examination and noted right midfoot tenderness. Dr. Bello disagreed with the diagnosis of reflex sympathetic dystrophy stating there are only subjective symptoms of foot pain and no clinical evidence for a specific diagnosis or CRPS. Dr. Bello further disagreed with the spinal cord stimulator recommendation stating that it was not necessary treatment "as all noninvasive pain management strategies have not been tried." RX 6. Dr. Bello placed Petitioner at maximum medical improvement. Dr. Bello further opined that Petitioner could return to work full-duty. Finally, Dr. Bello did not assess Petitioner a malingerer but rather stated that the "description of pain was out of proportion to the clinical examination." RX 6.

Petitioner testified at Arbitration that he wants the implantation of the permanent spinal cord stimulator. Petitioner testified that he continues to have swelling in the right foot and leg, and continues to take Vicodin and Oxycotin. Petitioner acknowledged that he is able to drive and walk for short distances, and that he would like to eventually return to work for Respondent.

### CONCLUSIONS OF LAW

**C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? F. Is the Petitioner's current condition of ill-being causally related to the injury? K. Is Petitioner entitled to any prospective medical care?**

The parties stipulated that Petitioner sustained an accident that arose out of and in the course of Petitioner's employment with the Respondent on January 6, 2009. Respondent does, however, dispute the accident dates of March 26, 2009 and January 25, 2010, which Petitioner alleges to be aggravations of the original injury of January 6, 2009.

Petitioner's ultimate diagnosis for which he continues to receive treatment is RSD. His treating physicians, Drs. French, Mohan, Jain and Anwar each relate his condition to the accident on January 6, 2009 when a co-worker drove over Petitioner's right foot resulting in a crush injury. Petitioner's treating physicians all concurred in their assessment and treatment of Petitioner, in that Petitioner required additional medical care, pain management, and was to remain off-work. Petitioner testified that he did not suffer a right foot injury or condition prior to the accident of January 6, 2009 and that his symptoms developed upon onset of that injury. Although Petitioner returned to work at intermittent periods after January 6, 2009, it is clear from the record that he returned for additional medical care due to flare ups of his right foot condition while driving the bus for Respondent. The alleged accident dates of March 26, 2009 and January 25, 2010 are two

such flare up dates. The Arbitrator finds that Petitioner sustained accidental injuries on January 6, 2009, with subsequent flare ups of his condition and that Petitioner's current and continued condition of ill-being is causally related to the accident and injury date of January 6, 2009.

The Arbitrator notes that Drs. Holmes and Bellos each determined that Petitioner did not have objective correlation of his subjective complaints to support any additional treatment. However, Petitioner responded favorably to the treatment rendered by his treating physicians, including the injections and trial stimulator. Furthermore, Dr. Holmes did not review the FCE of June 21, 2010, with valid results concluding that Petitioner could not return to work as a bus driver. Rather, Dr. Holmes relied only on the FCE of August 2010 in opining that Petitioner could return to work. In further finding causal connection for Petitioner's RSD, the Arbitrator places greater weight on the opinions of Petitioner's treating physicians as buttressed by Petitioner's positive treatment results, than on the opinions of Drs. Holmes and Bellos.

Based on the finding of causal connection and on the opinion of Dr. Anwar, the Arbitrator further finds that Petitioner is entitled to the prospective medical care prescribed by Dr. Anwar in the form of a spinal cord stimulator implant and to its attendant care pursuant to Section 8(a) of the Act.

**J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services? N. Is Respondent due any credit?**

Based upon the Arbitrator's finding that Petitioner's current condition of ill-being is causally related to the accident of January 6, 2009, the Arbitrator further finds that Respondent is to pay all reasonable and necessary medical expenses incurred by Petitioner in the care and treatment of his condition. Respondent is entitled to a credit for medical expenses paid.

**L. Is Petitioner entitled to temporary total disability benefits?**

Petitioner testified that he was off-work from January 26, 2009 through May 1, 2009, and then again from January 25, 2010 through the date of arbitration, September 18, 2012. Petitioner indicated that he was taken off-work by his treating physician, Dr. French, on January 25, 2010, and has not been released to return to work yet by Dr. Anwar, his current treating physician. This testimony is supported by the medical records of Dr. French, Dr. Jain and Dr. Anwar.

Based upon the Arbitrator's finding of causal connection and on the medical records of Petitioner's treating physicians, the Arbitrator further finds that Petitioner is entitled to temporary total disability benefits commencing January 26, 2009 through May 1, 2009, and commencing again January 25, 2010 through September 18, 2012. Respondent shall receive credit for amounts paid.

STATE OF ILLINOIS       )  
                                       ) SS.  
 COUNTY OF COOK        )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Vanderveen,

Petitioner,

14IWCC0338

vs.

NO: 11 WC 09662

Barr Trans Network, Inc. i/s/a Barr Trans,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 3, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

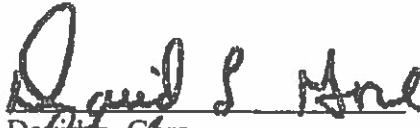

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0338

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 05 2014

DLG/gal  
O: 5/1/14  
45

  
David E. Gore  


Stephen Mathis

   
Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

VAMDERVEEN, WILLIAM

Employee/Petitioner

Case# 11WC009662

12WC005481

BARR TRANS NETWORK INC I/S/A BARR TRANS

Employer/Respondent

**14IWCC0338**

On 9/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0704 SANDMAN LEVY & PETRICH  
WILLIAM H MARTAY  
134 N LASALLE ST 9TH FL  
CHICAGO, IL 60602

INMAN & FITZGIBBONS LTD  
COLIN MILLS  
201 W SPRINGFIELD AVE STE 1002  
CHAMPAIGN, IL 61820



STATE OF ILLINOIS )  
)SS.  
COUNTY OF COOK )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**1417 CC0338**

William Vanderveen  
Employee/Petitioner

Case # 11 WC 09662

Consolidated cases: 12 WC 054811

v.

Barr Trans Network, Inc. i/s/a Barr Trans  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Svetlana Kelmanson**, Arbitrator of the Commission, in the city of **Chicago**, on **August 6, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

<sup>1</sup> Separate decisions are issued.

14IWCC0338

FINDINGS

On **10/30/2009**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$36,986.56**; the average weekly wage was **\$711.28**.

On the date of accident, Petitioner was **60** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$1,083.86** for TTD benefits, for a total credit of **\$1,083.86**.

Respondent is entitled to a credit of **\$12,436.86** under Section 8(j) of the Act.

ORDER

**No benefits are awarded. Although Petitioner proved a compensable accident, he failed to prove his condition of ill-being for which he seeks compensation is causally connected to the accident.**

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

**8/30/2013**

Date

SEP 3 - 2013

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 15, 2011, Petitioner filed an application for adjustment of claim, alleging that on or about December 1, 2009, he sustained accidental injuries to his right wrist when he slipped and fell. On February 7, 2012, Petitioner amended his application for adjustment of claim to allege the injury occurred while he was pulling a handle on trailer wheels.

Petitioner, a right hand dominant truck driver, testified that his job duties included driving, loading and unloading the truck. Petitioner denied any prior problems with his right wrist or hand. On December 1, 2009, Petitioner was making a delivery to Citgo Oil, which required delivery drivers to slide the back wheels of the trailer to the rear. Petitioner's trailer was old and rusted. He asked someone to rock the trailer while he pulled the pin to slide the back wheels to the rear. In the process, his right hand and wrist became "jammed."

Petitioner further testified that he reported the accident to Respondent's owner and completed an accident report. The accident report in evidence gives states the injury occurred "A.M. - 12-1" and Petitioner returned to work on "12-3." The report describes the accident as follows: "Pulling handle on trailer wheels attempting to slide tandems." The date of the report is listed as "12-." Petitioner testified that he sought treatment at Concentra in Bridgeview on December 1, 2009.

The medical records from Concentra show that at 6:55 a.m. on December 1, 2009, Petitioner presented at the clinic, complaining of injury to his right index finger and wrist as a result of pulling tandems on a trailer at 1 p.m. on October 30, 2009. Petitioner complained of persistent pain and denied receiving any treatment for the injury. The attending physician diagnosed finger and wrist sprain, prescribed wrist support and Aleve, and released Petitioner to return to work full duty.

The medical records from Dr. Joshi, Petitioner's primary care physician, indicate that on December 3, 2009, Petitioner complained of pain in the right upper extremity and was diagnosed with thumb sprain. The medical records from Dr. Joshi further show that Petitioner developed symptoms indicative of a stroke before January 6, 2010.

Petitioner testified that he continued to work until December 30, 2009, when he suffered another work accident, which is subject of the companion case No. 12WC05481. Petitioner further testified that he treated with Dr. Fakhouri for the injury to the right index finger and wrist.

The medical records from Midwest Orthopaedic Consultants show that on January 6, 2010, Petitioner saw Dr. Perez-Sanz, complaining of persistent pain in the right wrist and index finger after a work injury in October, while he was pulling a trailer pin. Dr. Perez-Sanz ordered an MRI. The MRI, performed January 18, 2010, showed a possible small ganglion cyst along the dorsal aspect of the carpal tunnel at the level of the trapezoid second metacarpal junction, erosion involving the dorsal medial aspect of the trapezoid, possible thickening of the distal median nerve, effusion within the distal radioulnar joint, and fluid along the ventral aspect of the radial styloid. On January 20, 2010, Dr. Perez-Sanz recommended consulting a hand and wrist

specialist, and Petitioner indicated her would see Dr. Fakhouri. On January 21, 2010, Petitioner saw Dr. Fakhouri, giving a history of pain in the right wrist and index finger since the beginning of December, after "pulling on a level of his tractor trailer." Dr. Fakhouri performed X-rays and diagnosed osteophyte formation and degenerative joint disease of the right wrist, including the lunate and the capitate, and PIP joint arthrosis with mucous cyst of the right index finger. Dr. Fakhouri opined the accident aggravated the degenerative conditions, and performed cortisone injections into the right wrist and index finger. He expected the symptoms to subside in four to six weeks and instructed Petitioner to follow up as needed.

Petitioner testified that he suffered a stroke in January of 2010, and did not return to Dr. Dr. Fakhouri until February 10, 2011. When he returned to Dr. Fakhouri, his right hand was extremely weak. Petitioner denied sustaining an intervening injury to his right hand or wrist. The medical records from Dr. Fakhouri show that on February 10, 2011, Petitioner complained that the wrist was severely painful, with limited range of motion. Dr. Fakhouri diagnosed chronic scapholunate disassociation that progressed to advanced scapholunate collapse. He recommended surgery. On March 3, 2011, Petitioner followed up, attributing the right wrist pain to an injury in December of 2009. Dr. Fakhouri opined that Petitioner's chronic scapholunate dissociation "is related to his December 2009 injury." On April 6, 2011, Dr. Fakhouri performed a proximal carpectomy, partial radial styloidectomy, and post interosseous neurectomy. Postoperatively, Petitioner underwent physical therapy.

On April 27, 2011, Dr. Carroll, an orthopedic surgeon, examined Petitioner at Respondent's request. Petitioner gave a history consistent with his testimony. Dr. Carroll opined the accident caused strain to the right thumb, index finger and possibly the wrist. Dr. Carroll did not think the accident caused or accelerated the advanced scapholunate collapse.

On June 20, 2011, Petitioner followed up with Dr. Fakhouri, reporting almost complete resolution of the wrist pain. On July 25, 2011, Petitioner reported the wrist was doing well. On physical examination, the strength was normal, with decreased flexion and extension due to the surgery. X-rays showed the radial capitate joint to be congruent. Dr. Fakhouri released Petitioner to return to work full duty and discharged him from care.

Petitioner testified that he retired from Respondent's employ because of the stroke. Currently, Petitioner is receiving Social Security disability benefits and veterans' benefits. Petitioner testified that the right wrist is weak and does not bend. He uses his left hand to perform the activities of daily living he used to do with his right hand. Petitioner feels the right hand "is not functioning" and he has "no movement in the wrist at all."

On cross-examination, Petitioner testified the accident might have occurred on November 30, 2009, but not on October 30, 2009. Petitioner recalled the accident occurred at 1 or 1:30 p.m., and he sought treatment at Concentra the following day. Petitioner further testified that the stroke affected his memory of the events. On redirect examination, Petitioner testified that the accident must have occurred on December 1, 2009, because "they would not let [him] work any time after an accident." On re-cross examination, Petitioner testified that "once an accident is reported to your boss or to anybody with authority in the company, you're done. You stop

working. They send you [for treatment]." Petitioner denied sustaining a work accident in October of 2009.

**In support of the Arbitrator's decision regarding (C), did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, and (D), what was the date of the accident, the Arbitrator finds as follows:**

The Arbitrator notes that Petitioner has poor memory of the events because he suffered a stroke in early January of 2010. Furthermore, the stroke affected the histories he gave to his medical providers after early January of 2010. Based on the documentary evidence and the opinion of Dr. Carroll, the Arbitrator finds that Petitioner sustained a work accident on or about October 30, 2009, spraining or straining his right index finger and right wrist. Petitioner did not initially report the accident and continued working. On or about December 1, 2009, Petitioner reported the accident and was sent to Concentra.

**In support of the Arbitrator's decision regarding (F), is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:**

The Arbitrator notes that on January 21, 2010, Dr. Fakhouri diagnosed osteophyte formation and degenerative joint disease of the right wrist, and PIP joint arthrosis with mucous cyst of the right index finger. Dr. Fakhouri performed cortisone injections into the right wrist and index finger and instructed Petitioner to follow up as needed. Dr. Fakhouri thought the accident aggravated the symptoms of the underlying degenerative conditions, and expected the symptoms to subside in four to six weeks. The Arbitrator does not find credible Dr. Fakhouri's subsequent opinion on March 3, 2011, that Petitioner's chronic scapholunate dissociation "is related to his December 2009 injury." The Arbitrator notes that Dr. Fakhouri did not explain the basis for his opinion, especially in light of X-ray and MRI findings showing no scapholunate dissociation or collapse in January of 2010. The Arbitrator relies on the opinion of Dr. Carroll that the accident caused strain to the right thumb, index finger and possibly the wrist, but did not cause or accelerate the advanced scapholunate collapse. At the arbitration hearing, Petitioner did not testify to any residual symptoms in his right index finger or thumb. The Arbitrator finds the surgery on April 6, 2011, for non-work related advanced scapholunate collapse constitutes an independent intervening cause, precluding a determination of any residual disability from the wrist sprain or strain.

**In support of the Arbitrator's decision regarding (J), were the medical services that were provided to Petitioner reasonable and necessary, and has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:**

Petitioner seeks an award of the medical bills he incurred for treatment of the advanced scapholunate collapse. The Arbitrator denies these medical bills as not causally related to the work accident.

14IWCC0338

**In support of the Arbitrator's decision regarding (L), what is the nature and extent of the injury, the Arbitrator finds as follows:**

As discussed, the surgery on April 6, 2011, for non-work related advanced scapholunate collapse constitutes an independent intervening cause, precluding a determination of any residual disability from the wrist sprain or strain. Accordingly, no permanent disability benefits are awarded.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gerardo Mendoza,

Petitioner,

14IWCC0339

vs.

NO: 11 WC 19340

Andy Frain Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary total disability, vocational rehabilitation assessment, maintenance, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 18, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0339

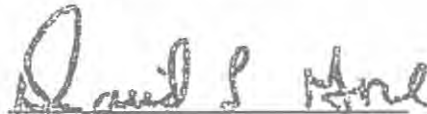
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

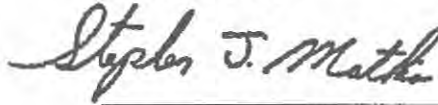
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 05 2014

DLG/gal  
O: 5/1/14  
45



David L. Gore



Stephen Mathis



Mario Basurto



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

MENDOZA, GERARDO

Employee/Petitioner

Case# 11WC019340

**14IWCC0339**

ANDY FRAIN SERVICES

Employer/Respondent

On 10/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0140 CORTI ALEKSY & CASTANEDA  
RICHARD ALEKSY  
180 N LASALLE ST SUITE 2910  
CHICAGO, IL 60601

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD  
JIGAR DESAI  
10 S RIVERSIDE PLZ SUITE 1530  
CHICAGO, IL 60606

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
X None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

**14IWCC0339**

**GERARDO MENDOZA**

Employee/Petitioner

Case # 11 WC 19340

v.

Consolidated cases: \_\_\_\_\_

**ANDY FRAIN SERVICES**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **8/19/2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD ☒ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other **Vocational Rehabilitation Assessment**

## FINDINGS

On the date of accident, **5/10/2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

See attached conclusions of law for the Arbitrator's causation-related findings.

In the year preceding the injury, Petitioner earned **\$20,368.40**; the average weekly wage was **\$391.70**.

On the date of accident, Petitioner was **38** years of age, *single* with **2** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$8,882.19** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$8,882.19**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

## ORDER

The parties agree Petitioner was temporarily totally disabled from May 10, 2011 through May 18, 2011 and from June 8, 2011 through November 28, 2011. These two periods total 26 1/7 weeks. They further agree that Respondent paid \$8,882.19 in temporary total disability benefits prior to trial. Arb Exh 1.

The Arbitrator finds that Petitioner failed to establish a causal connection between the undisputed work accident of May 10, 2011 and the restrictions that Dr. Lorenz re-instituted on November 28, 2011. Based on that finding, the Arbitrator denies Petitioner's claim for maintenance from November 29, 2011 through the hearing of August 19, 2013.

For the reasons set forth in the attached conclusions of law, the Arbitrator finds that Respondent was obligated to prepare a written assessment pursuant to Rule 7110.10 of the Rules Governing Practice Before the Workers' Compensation Commission. Ameritech Services, Inc. v. IWCC, 389 Ill.App.3d 191 (1<sup>st</sup> Dist. 2009).

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Molly C. Mason  
Signature of Arbitrator

10/18/13  
Date

OCT 18 2013



**Arbitrator's Findings of Fact**

The parties agree that Petitioner, an unarmed security officer, sustained an accident while working at a FedEx facility for Respondent on May 10, 2011. Petitioner testified his duties included checking employee I.D. cards, searching employees for weapons and recording information concerning the trailers that went in and out of Respondent's facility. T. 13-14, 17. Petitioner testified he was not required to get into a tractor to talk with a driver but sometimes had to open the rear door of an exiting trailer to make sure it was empty. The rear doors were of the roll-up type. Petitioner would open the door to the point where he could see the interior of the trailer. T. 15. Petitioner testified he was not required to perform any lifting. T. 15-16.

Petitioner testified he started working for Respondent in March or April of 2010, at which point he underwent training at a FedEx facility in Summit for about a month. At the time of the accident, he worked at a FedEx facility in McCook. T. 18-19.

Petitioner testified he worked the night shift, from 10 PM to 6 AM. To his recollection, he was working Monday through Friday as of the accident. T. 20-21.

Petitioner testified that, on May 10, 2011, he was on his motorcycle, exiting the FedEx facility, when another worker struck him head on, causing him to fly off of his bike and land on the concrete. His supervisor, Veronica Zenner, came to his aid and took him to the Emergency Room at LaGrange Memorial Hospital. T. 23-24.

The Emergency Room records reflect that Petitioner complained of back and bilateral leg pain after being struck by a car while he was operating his motorcycle. The attending physician, Dr. Phillips, noted a past history of a spinal fusion. He also noted leg abrasions and a laceration below Petitioner's right knee. He described Petitioner as cooperative and exhibiting an "appropriate mood and affect."

Dr. Phillips ordered X-rays of the lumbar spine, right knee and left tibia/fibula. The lumbar spine X-rays showed post-surgical changes from the previous fusion of L4-L5 and L5-S1. [Dr. Lorenz of Hinsdale Orthopaedics performed this fusion on May 2, 2008. The need for the fusion stemmed from a work accident of January 30, 2008 involving a different employer. RX 4.] The right knee X-ray showed a small effusion but no fracture. The left tibia/fibula X-ray showed no acute fracture or dislocation. Petitioner was given Motrin and Vicodin for pain. Dr. Phillips released Petitioner to light duty, with no lifting over 5 pounds. He instructed Petitioner to follow up with Dr. Khan the next day. PX 1. T. 24-25.

The Emergency Room records (PX 1) describe Petitioner as "alert and oriented." They contain no reference to drug testing.

Petitioner testified he went to the LaGrange Medical Center the following day, May 11, 2011, but saw Dr. Dugar instead of Dr. Khan. T. 25. Dr. Dugar noted that, the previous morning, Petitioner was on his motorcycle, stopped at a stop sign, when a FedEx employee driving a station wagon struck him, causing him to be thrown off of the motorcycle. Dr. Dugar noted that Petitioner landed on his right side.

Petitioner complained to Dr. Dugar of pain in his lower back, right shoulder and left shin, as well as a "pulling sensation" in his right knee after walking that day. Petitioner indicated he had undergone a lumbar fusion in 2008.

On examination, Dr. Dugar noted tenderness but a full range of motion in the right shoulder, mild muscle spasm in the lumbar area, a scrape and minimal swelling of the right knee and bruising/minimal swelling of the left shin.

Dr. Dugar diagnosed muscle strains and contusions. He recommended that Petitioner begin physical therapy "after Ibuprofen and rest." He directed Petitioner to refrain from working and return in two days. PX 2.

Petitioner returned to LaGrange Medical Center on May 13, 2011 and saw Dr. Khan. The doctor's note sets forth a consistent history of the accident of May 10, 2011. Dr. Khan noted that Petitioner injured his lower back, right shoulder, right knee and left shin. He also noted that Petitioner complained of 3/10 lower back pain despite taking Hydrocodone. On examination, Dr. Khan noted spasm in the right trapezius area, mild tenderness to palpation of the lumbar spine and a mild right knee abrasion. He diagnosed a trapezius muscle spasm and a cervical strain with right-sided radicular symptoms. He instructed Petitioner to continue the Vicodin (but only when at home), start Naproxen after finishing the Ibuprofen, begin therapy and return on May 17<sup>th</sup>. He directed Petitioner to stay off work.

On May 16, 2011, Petitioner underwent a physical therapy evaluation at LaGrange Medical Center. T. 26. The evaluating therapist noted complaints of pain in the neck, back, right shoulder and right knee. PX 2.

Petitioner returned to Dr. Khan on May 17, 2011, as directed. Petitioner reported some right trapezius and lower back improvement secondary to therapy but described his neck pain as unchanged. On cervical spine examination, Dr. Khan noted a reduced range of motion to the right, paracervical tenderness on the right and mild trapezius tenderness. He refilled the Naproxen and instructed Petitioner to continue therapy and return in ten days. He released Petitioner to non-specific "light duty" as of May 19, 2011. PX 2. T. 26-27.

Petitioner testified he did not return to work on May 19, 2011 because Respondent did not offer light duty. T. 27. He delivered Dr. Khan's light duty note to his supervisor, Veronica Zenner. On receipt of the note, Zenner told him, "I'll get back to you." Zenner did not schedule him for work thereafter. T. 36-37.



RX 1 reflects that Respondent terminated Petitioner on May 23, 2011 because Petitioner "failed drug test." RX 1 also reflects that Petitioner was "warned before discharge." No drug test records are in evidence. Petitioner testified that, at some point after he delivered the light duty note to Zenner, Brian Rayzicks, Respondent's branch manager, called him and informed him he was being terminated. T. 33-34, 37. He never heard from Respondent again. T. 47.

Petitioner attended therapy at LaGrange Medical Center on May 24, 25 and 26, 2011. On May 26, 2011, the therapist noted that Petitioner complained of neck pain, especially when looking up and to the right. She recommended that Petitioner continue therapy. PX 2.

On June 8, 2011, Petitioner saw Dr. Lorenz of Hinsdale Orthopaedics. Petitioner testified he selected Dr. Lorenz because the doctor had previously operated on his lower back. T. 28.

Dr. Lorenz's note of June 8, 2011 reflects that Petitioner previously underwent a lumbar fusion, returned to work following the fusion and was "doing fine" until the accident of May 10, 2011. The note also reflects that Petitioner had "multiple areas of complaints" following this accident and was "taken to occupational therapy," where, according to Petitioner, a drug test was "slightly positive for marijuana."

Dr. Lorenz noted that Petitioner complained of neck pain radiating toward the right scapular area and right shoulder.

On cervical spine examination, Dr. Lorenz noted a positive Spurling maneuver to the right and a decreased range of motion. On lumbar spine examination, Dr. Lorenz noted some mild tenderness in the paraspinous musculature, a "sensation of tightness" and passive forward flexion of 50 to 60 degrees.

Dr. Lorenz obtained cervical and lumbar spine X-rays. The cervical spine X-rays showed no fractures. The lumbar spine X-rays showed "a well-healed fusion with no abnormality."

With respect to the cervical spine, Dr. Lorenz diagnosed C4-C5 radicular irritation and a possible disc herniation. With respect to the lumbar spine, he diagnosed a strain.

Dr. Lorenz started Petitioner on a Medrol Dosepak. He prescribed Norco for severe pain and a cervical spine MRI. He took Petitioner off work and instructed him to continue therapy. PX 3.

The cervical spine MRI, performed on June 9, 2011, showed mild spondylotic changes with reversal of normal lordosis, a mild disc bulge without significant stenosis at C4-C5 and a disc bulge and mild stenosis at C5-C6, greater on the right. PX 3.

Petitioner returned to Dr. Lorenz on June 22, 2011. Petitioner again complained of neck pain, especially when extending his neck or turning his head to the right.

On examination, Dr. Lorenz noted 5/5 strength, decreased rotation to the right, full rotation to the left, some pain on flexion and extension, tenderness over the right trapezius, some focal trigger point and tenderness in the right occiput.

Dr. Lorenz interpreted the MRI as showing diffuse bulging at C4-C5 and C5-C6, with no signs of herniation, and a high intensity signal in the posterior annulus at C5-C6, "consistent with what looks like a partial tear." He started Petitioner on Naprelan, an anti-inflammatory, and instructed him to stay off work. He referred Petitioner to Dr. Gruft for therapy and to Dr. Lipov for possible occipital trigger point and/or facet injections. PX 3.

Petitioner underwent therapy at Dr. Gruft's facility, From Pain to Wellness, from July 14, 2011 through August 26, 2011. PX 3. T. 29-31. Petitioner testified he never saw Dr. Lipov. T. 30.

Petitioner returned to Dr. Lorenz on November 28, 2011. In his note of that date, Dr. Lorenz indicated Petitioner reported improvement secondary to the therapy and complained only of "a little trigger point on the right" and some low back achiness with excessive activity. Dr. Lorenz obtained lumbar spine X-rays, which showed an "L4 to S1 fusion with the hardware removed." Dr. Lorenz assessed the following: 1) resolved cervical strain; 2) cervical spondylosis; and 3) L4 to S1 fusion." He released Petitioner to "permanent light duty" in accordance with a functional capacity evaluation performed in 2009, i.e., no lifting over 17 pounds frequently, no lifting over 50 pounds occasionally, sitting limited to 60-minute intervals, standing limited to 30-minute intervals and occasional bending. He found Petitioner to have reached maximum medical improvement. PX 3.

At the hearing, the parties stipulated that Petitioner was temporarily totally disabled from May 10, 2011 through May 18, 2011 and from June 8, 2011 through November 28, 2011. These two intervals total 26 1/7 weeks. They also stipulated that Respondent paid temporary total disability benefits totaling \$8,882.19. Arb Exh 1.

The dispute in this case centers on Petitioner's claim for maintenance benefits from November 29, 2011 through August 19, 2013, the date of hearing. Arb Exh 1.

Petitioner testified he did not resume working for Respondent at any time after his last visit to Dr. Lorenz on November 28, 2011. T. 37. Petitioner also testified he stopped receiving benefits as of that date. T. 38, 47. After Dr. Lorenz released him to restricted duty, he began looking for work. On about May 15, 2012, he began working as a pizza delivery driver. He was still working in this capacity as of the hearing. He testified he does not receive paychecks or benefits. His pay consists of \$2.50 per delivery plus tips. He receives his pay at the end of each workday. T. 39-40. He uses his own vehicle to make the deliveries. He is responsible for paying for gas, insurance and any necessary repairs. As of the hearing, he was working from 5:00 PM



to midnight, typically five nights per week. T. 41, 44. The pizza parlor stops delivering at midnight. If an order comes in at 11:59 PM, he has to pay the business for the pizza upfront with the understanding he will collect from the customer on delivery. T. 42. He averages about \$300 per week, before deducting gas and other expenses. T. 44. He pays about \$400 in child support per month. T. 46. He is continuing to look for work. He receives job leads from friends but the leads are typically for jobs that involve heavy lifting. T. 47-48. In the last six months, a business called Polar Ice offered him a job but the job exceeded his work restrictions. T. 46.

Petitioner denied re-injuring his neck or back after May 10, 2011. T. 48. The lumbar spine surgery that Dr. Lorenz performed before that date stemmed from a work accident. It was after he recovered from this surgery that he began working for Respondent. T. 48-49.

Under cross-examination, Petitioner testified he began working for Respondent in approximately May 2010. He worked from 10:00 to 6:00. He did not work overtime. T. 51. The accident of May 10, 2011 occurred at about 6:05 AM, right after he left work. T. 52. He was in FedEx's parking lot when a FedEx employee struck him. T. 52. Before he returned to Dr. Lorenz in June of 2011, he had last seen the doctor in early 2010, at which point the doctor had him on permanent restrictions. T. 55. The job he accepted at Respondent was within those restrictions. T. 60. Otherwise, he would not have been able to accept the job. T. 60. He told Respondent about the restrictions when he was hired. T. 61. The job allowed him to sit and stand. He was not required to exceed Dr. Lorenz's restrictions. T. 61. After the May 10, 2011 accident, he underwent drug testing. T. 63. His understanding is that the testing was positive for marijuana. T. 64. When Respondent's regional manager called him, he asked the manager why he was being terminated and was told that it was because the drug test "came out positive." T. 64. Respondent had never reprimanded him for not performing his job correctly. T. 65. He cannot remember whether the restrictions Dr. Lorenz imposed in November of 2011 were different from the previous restrictions. T. 65. The job he performed for Respondent was within Dr. Lorenz's lifting and sit/stand restrictions. The job did not require him to bend frequently. T. 71. When he looked for work, he went through agencies. He does not have proof of the job applications he has submitted. T. 73-74. He writes down information concerning his pizza delivery earnings. He did not bring any of this information to the hearing. T. 73. When he worked for Respondent, he was not reimbursed for gas or vehicle repairs. T. 73. He applied online for the job with Respondent. T. 74.

On redirect, Petitioner testified he wanted to return to work for Respondent when he presented Dr. Khan's light duty note to Veronica Zenner. Zenner did not tell him he would be put back to work. He next had contact with Respondent when the regional manager called him and told him he had been terminated. T. 81-82. No one provided him with any drug test results. His belief that the test was positive was based on what Respondent told him. T. 83.

Respondent did not call any witnesses. In addition to the exhibits previously discussed, Respondent offered into evidence an undated "return to work job description" completed by Dr. Phillips concerning Petitioner's security officer job. This description describes the job as sedentary and involving no lifting over 5 pounds. RX 2. Respondent also offered into evidence



a print-out of the temporary total disability and medical payments it made in this case. RX 3. Respondent also offered into evidence records concerning the treatment Petitioner underwent with Dr. Lorenz prior to May 10, 2011. RX 3.

#### **Arbitrator's Conclusions of Law**

**Did Petitioner establish a causal connection between his undisputed work accident of May 10, 2011 and his current condition of ill-being?**

The Arbitrator finds that Petitioner's undisputed work accident resulted in a new cervical spine condition of ill-being, as diagnosed by Dr. Lorenz, and an aggravation of his pre-existing lumbar spine condition of ill-being. In so finding, the Arbitrator relies on the "chain of events" and the treatment records. The records from LaGrange Memorial Hospital and LaGrange Medical Center reflect that Petitioner was on a motorcycle, stopped at a stop sign, when another worker driving a station wagon struck him, causing him to be thrown off the motorcycle. The records also reflect that Petitioner experienced an abrupt onset of right-sided spine and bilateral leg pain after this collision. Within a couple of days of the collision, Petitioner was also complaining of right-sided trapezius and neck pain. Dr. Khan diagnosed cervical, right trapezius and lumbar strains on May 13, 2011. When Dr. Lorenz saw Petitioner on June 8, 2011, having last seen him about fifteen months earlier, he noted that Petitioner had returned to work following the 2008 lumbar fusion and had been doing relatively well until the May 10, 2011 accident. Based on Petitioner's presentation on June 8, 2011, Dr. Lorenz diagnosed a lumbar strain and a possible cervical disc herniation. He ordered a cervical spine MRI, which he later interpreted as showing bulges and what appeared to be a partial tear at C5-C6. He recommended a course of conservative care with two different physicians, only one of whom Petitioner saw. When Dr. Lorenz last saw Petitioner, on November 28, 2011, he noted that Petitioner was still experiencing some right-sided "trigger point" pain in his upper back and some lower back achiness. PX 3.

The Arbitrator further finds that Petitioner failed to establish a connection between the undisputed work accident of May 10, 2011 and the permanent restrictions that Dr. Lorenz re-instituted on November 28, 2011. Those restrictions were based on a functional capacity evaluation performed on December 10, 2009 in connection with the January 30, 2008 work accident. RX 4.

**Is Petitioner entitled to maintenance?**

The parties agree that Petitioner was temporarily totally disabled during two intervals, with the last interval ending on November 28, 2011, the date of Petitioner's last visit to Dr. Lorenz. Arb Exh 1. The dispute centers on whether Petitioner is entitled to maintenance from November 29, 2011 through the August 19, 2013 hearing.

Section 8(a) of the Act provides that an "employer shall \* \* \* pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the

employee, including all maintenance costs and expenses incidental thereto.” 820 ILCS 305/8(a). The courts have construed the term “rehabilitation” broadly to include an injured worker’s self-directed job search. See, e.g., Greaney v. Industrial Commission, 358 Ill.App.3d 1002, 1019 (2005). A claimant is generally entitled to vocational rehabilitation when he sustains an injury which causes a reduction in earning power. National Tea Co. v. Industrial Commission, 97 Ill.2d 424, 432 (1983).

Petitioner argues that the injuries he sustained on May 10, 2011 caused a reduction in earning power. In advancing this argument, Petitioner relies in part on RX 2, a return to work job description completed by Dr. Phillips. Petitioner asserts that RX 2 memorializes work restrictions [including a 5-pound lifting restriction] imposed on Petitioner by Dr. Phillips after the May 10, 2011 accident. The Arbitrator does not view RX 2 as such. RX 2 bears no date and no reference to the accident.

Petitioner also relies on McHatton v. Manchester Tank, 08 WC 43131, a decision in which the Commission affirmed an award of maintenance to a claimant who conducted a self-directed job search after being terminated while subject to permanent restrictions. The Arbitrator views McHatton as factually distinguishable from the instant case. The claimant in McHatton acquired permanent restrictions as a result of the work accident at issue in his claim whereas Petitioner was subject to permanent restrictions before Respondent hired him. Petitioner testified he made Respondent aware of the restrictions at hiring. Petitioner also testified that the security job he performed for Respondent was within those restrictions. When Dr. Lorenz released Petitioner from care on November 28, 2011, he relied on a functional capacity evaluation performed in 2009 and imposed the same restrictions that Petitioner brought to Respondent’s door. There is no indication that Dr. Lorenz linked any of the November 28, 2011 restrictions to the injuries Petitioner sustained on May 10, 2011.

Having found that Petitioner failed to establish causation as to the restrictions Dr. Lorenz re-instituted on November 28, 2011, the Arbitrator declines to award maintenance benefits in this case.

#### **Was Respondent obligated to prepare an assessment pursuant to Rule 7110.10?**

Rule 7110.10 of the Rules Governing Practice Before the Workers’ Compensation Commission requires an employer, in consultation with an injured employee and his representative, to prepare a “written assessment of the course of medical care and, if appropriate, rehabilitation required to return the injured worker to employment when it can be reasonably determined that the injured worker will, as a result of the injuries be unable to resume the regular duties in which engaged at the time of injury, or when the period of total incapacity of work exceeds 120 continuous days, whichever first occurs.” [emphasis added] In Ameritech Services, Inc. v. IWCC, 389 Ill.App.3d 191, 207-8 (1<sup>st</sup> Dist. 2009), the Appellate Court held that “Rule 7110.10 requires the preparation of a written assessment even in circumstances where no plan or program of vocational rehabilitation is necessary or appropriate.”

In the instant case, Respondent stipulated to two intervals of temporary total disability, with the second interval consisting of 174 consecutive days. Arb Exh 1. At no point did Respondent prepare an assessment. Based on the wording of Rule 7110.10 and Ameritech Services, the Arbitrator finds that Respondent was obligated to prepare an assessment at the 120-day point, regardless of any other factors.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lee Walker,

Petitioner,

14IWCC0340

vs.

NO: 08 WC 03203

United Airlines,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical expenses, prospective medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission hereby adopts the Arbitrator's findings of fact and conclusions of law. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 11, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0340


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

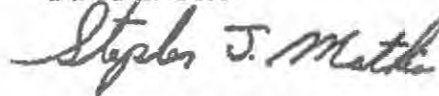
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$49,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 05 2014

DLG/gal  
O: 5/1/14  
45



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR  
& 8(a)

**WALKER, LEE**

Employee/Petitioner

Case# **08WC003203**

**14IWCC0340**

**UNITED AIRLINES**

Employer/Respondent

On 10/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2356 DONALD W FOHRMAN & ASSOC  
ADAM J SCHOLL  
101 W GRAND AVE SUITE 500  
CHICAGO, IL 60654

0560 WIEDNER & McAULIFFE LTD  
MARK P MATRANGA  
ONE N FRANKLIN ST SUITE 1900  
CHICAGO, IL 60606



STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b) & 8(a)

14IWCC0340

Lee Walker  
Employee/Petitioner

Case # 08 WC 3203

v. Consolidated cases: N/A

United Airlines  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **July 23 & 25, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On the date of accident, **November 2, 2007**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident as explained *infra*.

In the year preceding the injury, Petitioner earned **\$29,334.24**; the average weekly wage was **\$564.12**.

On the date of accident, Petitioner was **44** years of age, *single* with **0** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$63,192.51** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$63,192.51**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

## ORDER

*Temporary Total Disability*

Respondent shall pay Petitioner temporary total disability benefits of \$376.08/week for 298 & 4/7th weeks, commencing November 3, 2007 through July 23, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from November 2, 2007 through July 23, 2013, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of \$63,192.51 for temporary total disability benefits that have been paid.

*Prospective Medical Treatment*

As explained in the Arbitration Decision Addendum, the Arbitrator awards the prospective medical care requested pursuant to Section 8(a) of the Act in the form of the recommended left knee surgery prescribed by Dr. Nenno as it is reasonable and necessary to alleviate Petitioner from the effects of his injury at work.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

OCT 11 2013

**October 10, 2013**

Date



ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION *ADDENDUM*  
19(b) & 8(a)

Lee Walker  
Employee/Petitioner

Case # 08 WC 3203

v.

Consolidated cases: N/A

United Airlines  
Employer/Respondent

**FINDINGS OF FACT**

The issues in dispute are causal connection, a period of temporary total disability benefits, and Petitioner's entitlement to prospective medical care. Arbitrator's Exhibit<sup>1</sup> ("AX") 1. The parties have stipulated to all other issues. AX1.

*Background*

Petitioner testified that he was employed by Respondent on November 2, 2007 as a flight attendant and had been so employed since October of 1997. Petitioner described that he was on his feet up to 15 hours at a time and that his job required constant walking, lifting, bending, squatting, and ability to lift doors weighing over 50 lbs. in case of an emergency. Petitioner was living in Ohio at the time of the injury and subsequently moved to New York.

On November 2, 2007, Petitioner was flying from Richmond, Virginia to Washington Dulles airport. He testified that about 10-15 minutes before landing, the crew was making final preparations and he was picking up trash and walking toward the rear of the aircraft when he tripped over a piece of carpeting that was not secured in front of the rear lavatory. Petitioner testified that he fell and hit the wall opposite the washroom door and fell into the washroom door and then landed hard on his knees. He testified that he injured his left knee and experiencing "striking pain" immediately following the occurrence. He notified two other flight attendants and later completed accident reports.

Prior to this incident, Petitioner testified that he had a left knee injury approximately six years earlier during an annual training exercise for re-certification. He testified that his treatment included an arthroscopic surgery and debridement. He missed approximately 6-8 weeks of work and then returned to work. Petitioner testified that he has had no left knee problems until November 2, 2007.

*Medical Treatment*

Petitioner testified that he went to Mercy Medical in Canton, Ohio. He was examined and placed off work. He testified that he followed up over the next few weeks while he was kept off work and moved to Buffalo, New York before Thanksgiving of 2007. The medical records reflect that a Dr. Hensley ordered a left knee MRI which was performed on November 20, 2007 and revealed no evidence of a meniscal tear, a minimal medial collateral ligament injury most likely remote in nature, and chondromalacia patella. PX2 at 142-43.

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<sup>1</sup> The Arbitrator similarly references the parties' exhibits herein. Petitioner's exhibits are denominated "PX" and Respondent's exhibits are denominated "RX" with a corresponding number as identified by each party.

14IWCC0340

Petitioner testified that he then went to Knee Center of Western New York and saw Dr. Stube as referred by Gallaher Bassett. The medical records reflect that Keith Stube, M.D. ("Dr. Stube") at The Knee Center of Western New York on December 24, 2007. PX1 at 1-2. He provided a history of injury while working, primarily anterior medial knee pain, and that he had been using ice and heat without relief. *Id.* He also reported a twisting injury six years prior which required an arthroscopy. *Id.* After an examination noting medial joint line tenderness with a positive McMurray's test, Dr. Stube diagnosed Petitioner with left medial knee pain and possible medial meniscal tear. *Id.* He ordered a left knee MRI. *Id.*

On January 21, 2008, Petitioner returned to the Knee Center and saw a certified physician's assistant, Jeffrey Rassman, PA-C ("Mr. Rassman") reporting continued symptomatology. PX1 at 3. Mr. Rassman noted that Petitioner appeared to have exacerbated mild patellar chondromalacia and administered a cortisone injection. *Id.* He provided a patellar stabilizing knee brace, recommended riding a stationary bike at home, and released him to sedentary work until his next follow up visit. *Id.* On March 17, 2008, Petitioner reported continued pain along the medial aspect of the knee. PX1 at 4-5. Mr. Rassman reviewed Petitioner's recent MRI noting that it showed a fissure along the medial aspect of the patella. *Id.* He noted that Petitioner had not improved after physical therapy, his injection did not benefit Petitioner, and he requested authorization for Visco supplementation for the fissure in the patella. *Id.*

#### *First Section 12 Examination – Dr. Zoellick*

On April 8, 2008, Petitioner underwent an independent medical examination with David Zoellick, M.D. ("Dr. Zoellick") at Respondent's request. PX8 at 1-5. Petitioner reported continued pain on the inside of his left knee with no change, swelling and increase in pain with any activity. *Id.* Dr. Zoellick examined Petitioner, took a history from him, reviewed various medical records, and issued a report of the same date. *Id.* He diagnosed Petitioner with a left knee strain/contusion with aggravation of underlying chondromalacia of the left knee following the accident at work. *Id.* He recommended either repeat steroid injections with therapy, hyaluronic acid supplementations such as Supartz or Synvisc, or repeat arthroscopy. *Id.*

#### *Continued Medical Treatment*

Petitioner received three Euflexxa injections on May 15, 22, and 29, 2008. PX1 at 5-11. He then came under the care of Donald Nenno, II, M.D. ("Dr. Nenno") on July 20, 2008, when he presented with complaints of swelling, locking and giving way of the left knee. PX2 at 100-101. On examination, Dr. Nenno noted tenderness over the left knee generally, but especially along the medial joint line and medial patellar area. *Id.* He diagnosed Petitioner with chronic left knee pain of an unclear etiology, but most likely on the basis of chondromalacia. *Id.* He ordered Neurontin and scheduled a follow up in one month. *Id.*

On August 17, 2008, Petitioner reported that the Neurontin did not help him significantly and that he continued to have some swelling, giving way sensations, and pseudo-locking with the knee in extension. PX2 at 98. Dr. Nenno diagnosed Petitioner with classic patellofemoral signs, ordered physical therapy for patellar mobilization and strengthening, and a follow up visit. *Id.*

On September 14, 2008, Petitioner returned to Dr. Nenno reporting no improvement with physical therapy, decreased range of motion, feeling that his knee was "full" and gave way at times, and that squatting bothers

him significant. PX2 at 96. Dr. Nenno noted Petitioner's lack of improvement despite ten months of conservative treatment and recommended an arthroscopy to diagnose and debride the knee. *Id.*

Petitioner underwent the recommended surgery on October 6, 2008. PX2 at 93-94. Pre-operatively, Dr. Nenno diagnosed Petitioner with chondromalacia of the left knee. *Id.* He performed an arthroscopy, debridement and excision of plica left knee. *Id.* Intra-operatively, Dr. Nenno noted significant chondromalacia of the medial facet of the patella and significant cartilaginous loose fragments within the knee, a significant plica formation along the medial femoral condyle, and fairly well-maintained medial and lateral compartments and anterior and posterior cruciate ligaments. *Id.* He also debrided synovitis anteriorly and medially and removed plica from the superior lateral aspect of the suprapatellar pouch, across the suprapatellar pouch, and down the medial gutter. *Id.* Post-operatively, Dr. Nenno diagnosed Petitioner with chondromalacia of the left knee plus plica. *Id.*

Petitioner followed up with Dr. Nenno post-operatively from October 20, 2008 through December 2, 2008 at which time he ordered additional physical therapy. PX2 at 87, 89, 91. At his initial physical therapy session on December 12, 2008, the physical therapist noted a positive Clarke's sign for chondromalacia patella on the left. PX4 at 8-10.

As of January 6, 2009, Dr. Nenno noted that Petitioner was making slow but continued progress. PX2 at 85. Petitioner was standing and walking fairly well, but was cautious with weight bearing. *Id.* The knee was stable and had full range of motion, although there was some tenderness but no effusion. *Id.* Dr. Nenno ordered continued physical therapy and scheduled a follow up in six weeks. *Id.* On February 13, 2009, Petitioner reported stiffness aggravated by stair climbing or squatting, inability to kneel, and significant swelling in the knee. PX2 at 83. Dr. Nenno requested authorization for Synvisc injections to improve function. *Id.*

#### *Second Section 12 Examination – Dr. Zoellick*

Petitioner saw Dr. Zoellick a second time on February 24, 2009. PX8 at 6-9. At that time, Petitioner reported continued pain under the kneecap and pain with bending, kneeling, squatting, and ascending/descending stairs. *Id.* He also reported only a 20% improvement since his surgery in October. *Id.* On examination, Dr. Zoellick noted no crepitus or instability, minimal swelling, and full range of motion. *Id.* Lachman and anterior Drawer tests were negative, but there was pain with patellofemoral compression, and Petitioner had tenderness medially and laterally as well as on extremes of motion. *Id.*

Dr. Zoellick diagnosed Petitioner with left knee chondromalacia that was aggravated or caused by his injury at work. *Id.* He noted that Petitioner's examination findings were objectively consistent with his reported symptoms of pain with patellofemoral compression (i.e., pain going up and down stairs). *Id.* He agreed with the recommendation for Synvisc injections and a trial return to work thereafter. *Id.* He opined that Petitioner was not yet at maximum medical improvement. *Id.*

#### *Continued Medical Treatment*

Petitioner continued to follow up with Dr. Nenno from March 13, 2009 through May of 2009. PX2 at 72-81. Petitioner received the recommended series of three Synvisc injections through May 12, 2009. PX2 at 75, 77. Petitioner testified that these injections did not change his pain level.

At his next follow up visit on July 9, 2009, Petitioner reported really having no change in his knee condition, difficulty with walking/stairs/kneeling and pain at rest. PX2 at 72. Dr. Nenno's examination revealed no



swelling or deformity, normal gait, full range of motion, and tenderness about the patellofemoral joint. *Id.* Dr. Nenno prescribed Celebrex to see if that helped improve Petitioner's function. PX2 at 72.

On July 21, 2009, Petitioner underwent a functional capacity evaluation at Niagara Physical Therapy. PX2 at 110-119. The evaluation report indicated that Petitioner could perform very light duty with no lifting over 10 lbs. and no standing for more than 6 hours. PX2 at 113. Petitioner testified that Respondent remained unable to accommodate his work restrictions at this time.

Petitioner returned to Dr. Nenno on August 14, 2009, but noted that the functional capacity evaluation results did not indicate what Petitioner's restrictions would be. PX2 at 68. He scheduled a follow up visit in six weeks. *Id.* On September 25, 2009, Petitioner reported that he was not doing very well regarding his knee. PX2 at 65. He reported pain, limping, swelling, inability to walk over one block or kneel, and that stairs were almost impossible to do. *Id.* Dr. Nenno diagnosed Petitioner with chronic left knee pain status post arthroscopy one year earlier and now showing significant patellofemoral chondromalacia. *Id.* He recommended an arthroscopy or perhaps some form of a partial knee replacement depending on the intraoperative findings at that time. *Id.*

#### *Third Section 12 Examination – Dr. Zoellick*

Petitioner saw Dr. Zoellick a third time on February 9, 2010. PX8 at 10-13. At that time, he reported constant pain, pain with walking/bending/twisting/going down stairs, and no instability or weakness, but incapacitation due to the pain. *Id.* On examination, Dr. Zoellick noted a slight antalgic gait, mild swelling of the left knee with tenderness along the medial joint line, and mild pain on patellofemoral compression. *Id.* X-rays revealed slight medial joint space narrowing. *Id.*

Dr. Zoellick reviewed additional treating medical records and Petitioner's functional capacity evaluation test results. *Id.* He opined that Petitioner's left knee complaints were due to chondromalacia patella and that a third arthroscopy would not do much to change Petitioner's condition. *Id.* Instead, Dr. Zoellick recommended one month of work conditioning and then to increase Petitioner's activity level. *Id.* He noted that if Petitioner was unable to undergo the work conditioning, then surgery would be the only remaining option. *Id.* In those circumstances, Dr. Zoellick recommended a patellofemoral resurfacing procedure instead of any type of knee replacement given that Dr. Nenno's last operative note reflects that the articular cartilage in Petitioner's medial and lateral joints looked good. *Id.* He also opined that Petitioner could return to work based on the functional capacity evaluation results. *Id.*

#### *Continued Medical Treatment*

Petitioner returned to Dr. Nenno on May 4, 2010 at which time he commented on Dr. Zoellick's report. PX2 at 56-57. Petitioner reported that he had constant pain in his whole knee, ability to walk about a block, and difficulty with stairs. *Id.* On examination, Petitioner had both medial and patellofemoral tenderness. *Id.* Dr. Nenno indicated that Petitioner had left knee arthritis as a result of a work related injury, which was significantly limiting his functions and causing him to be unable to work. *Id.* Dr. Nenno considered the patellofemoral resurfacing Dr. Zoellick recommended to be "a fairly aggressive approach," and doubted that it would solve Petitioner's problems. *Id.* He indicated that this type of surgery was performed in the late 1970's and fell out of favor, and have now resurfaced as a partial knee replacement solution similar to a unicompartmental knee for medial or lateral joint arthritis. *Id.* Dr. Nenno further indicated that the arthroscopic surgery that he recommended was also to evaluate whether there is significant arthritis in the rest of the knee,

which would render the patellofemoral resurfacing [recommended by Dr. Zoellick] unsuccessful. *Id.* He reiterated his request for authorization. *Id.*

Petitioner saw Dr. Nenno again on June 18, 2010 at which time he changed his opinion regarding the propriety of patellofemoral arthroplasty somewhat. PX2 at 53. He continued to request an arthroscopy to assess the other compartments of Petitioner's knee, but indicated that if this was not authorized he would propose to undertake the patellofemoral arthroplasty and stated that a complete knee replacement might be required if the other compartments in the knee showed significant changes. *Id.*

Petitioner testified that he moved back to Ohio before October of 2010 and saw a new physician, Dr. London, who did not recommend surgery.

Petitioner resumed his medical care with Dr. Nenno on February 25, 2011 with continued complaints. PX2 at 44. Dr. Nenno noted a loss of extension, a very slightly altered gait, and tenderness over the medial joint line and the patellofemoral area. *Id.* He noted his concern that Petitioner was now developing changes in the medial aspect of the knee. *Id.* He noted also Petitioner's report that he had been terminated from his employment based on having an extended period of disability. *Id.* Dr. Nenno reiterated the recommendation for surgery: a patellofemoral [resurfacing] or total knee replacement. *Id.*

Petitioner testified that his benefits were discontinued in March of 2011 and that no vocational rehabilitation or retraining was offered to him. He also testified on cross examination that he did not look for work since his functional capacity evaluation test results within his limitations. Petitioner testified that he applied for, and was placed on, social security disability and began receiving benefits in 2010 based on a cluster headaches condition. He testified that his ssdi payments were offset by the temporary total disability benefits that he received during the period of time that these two sources of income overlapped.

#### *Fourth Section 12 Examination – Dr. D'Silva*

On June 29, 2011, Petitioner underwent a fourth independent medical examination with a new evaluator, Joseph D'Silva, M.D. ("Dr. D'Silva"), at Respondent's request. RX1. Dr. D'Silva examined Petitioner, took a history from him, reviewed various medical records, and issued a report of the same date. *Id.*

Petitioner reported experiencing daily pain while awake and at night. *Id.* He also reported worsening pain with attempting to bend/stoop/kneel or walk over one block. *Id.* Petitioner further reported that the pain was underneath the patella and peripatellar in nature. *Id.* On examination, Dr. D'Silva noted a non-antalgic gait with no effusion in either knee, a positive Hoover sign when asked to extend the lower extremity reporting too much pain to do that and no pressure on the contralateral leg (which he noted was in contraindication when asked to lift the right leg and forcibly pushing down with the left lower extremity), pain on compression to either side of the patella and pain to light touch over the skin of the patella, and diffuse pain medially, greater than laterally, and along the femoral condyles. *Id.* Petitioner also reported pain with varus/valgus stress testing and an attempted anterior Drawer maneuver. *Id.* Dr. D'Silva further noted active bending to 70 degrees with full extension compared to 0-130 degrees on the right. *Id.*

Before rendering his opinions, Dr. D'Silva qualified them by noting that they were limited secondary to the fact that he noted significant inconsistencies during Petitioner's physical exam which suggested symptom magnification and less than full effort. Specifically, Dr. D'Silva noted that Petitioner's complaints of pain were out of proportion to his examination; that is, Petitioner's subjective complaints were inconsistent with Dr.

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D'Silva's objective findings. He noted discrepancies during range of motion testing and a positive Hoover sign which was significant for lack of full effort. *Id.*

In light of these qualifications, Dr. D'Silva opined that Petitioner had non-specific left knee pain and that his (Dr. D'Silva's) findings did not correlate with Petitioner's subjective complaints as he explained and the symmetry in Petitioner's thigh and calf despite a four-year history of pain after his injury at work. *Id.* He recommended no further diagnostic testing, indicated that no further surgery was medically necessary based on the October 2008 operative report (although his opinion might change if he could view intraoperative pictures), and he recommended a "qualified" functional capacity evaluation based on his inconsistent examination and symptom magnification so that validity could be determined. *Id.* Ultimately, Dr. D'Silva opined that Petitioner magnified his symptoms and that they were unrelated to the injury at work, Petitioner was at maximum medical improvement, and he could return to unrestricted work at any time. *Id.*

Dr. D'Silva later reviewed the intraoperative photographs and provided a supplemental report dated November 27, 2012. RX2. He indicated that the pictures were grainy, but grossly still identifiable. *Id.* The first picture portrayed the undersurface of the patella, followed by the medial compartment, including identification of the medial meniscus. *Id.* The second page of photographs portrayed the anterior notch and the anterior cruciate ligament, as well as what appeared to be shaving of the undersurface of the patella, the medial femoral condyle, and the trochlear groove. *Id.* He indicated that nothing in those intraoperative pictures would change his prior opinions as stated in his original June 29, 2011 report. *Id.*

#### *Continued Medical Treatment*

Petitioner testified that he returned to Dr. Nenno on February 5, 2013, at which time he again recommended surgery, but now indicated that it should be a full knee replacement. The medical records reflect that Petitioner presented at that visit reporting increasing problems, medial and anterior left knee pain, swelling, ability to walk only a short distance without discomfort, and that stairs were "awful." PX2 at 40-41. Dr. Nenno diagnosed with chronic left knee pain and noted that his prior arthroscopy showed significant chondromalacia in the knee in the patellofemoral joint. *Id.* He administered a cortisone injection and indicated that Petitioner was now in need of more aggressive treatment to relieve his complaints, a total knee replacement. *Id.*

#### *Additional Information*

Petitioner testified that he wants the recommended surgery because he needs to regain his health. He explained that in the past 5 ½ years he gained about 60 lbs., has experienced bouts of depression related to the pain, and has been unable to bend down to do things or perform activities like gardening, mowing the lawn, or housekeeping.



The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

**In support of the Arbitrator's decision relating to Issue (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:**

The Arbitrator finds that Petitioner's claimed current condition of ill-being in the left knee is causally related to the injury sustained at work on November 2, 2007. In so concluding, the Arbitrator relies on the credible testimony of Petitioner, the opinions of Dr. Nenno as reflected in Petitioner's treating medical records, and the first three Section 12 examination reports authored by Dr. Zoellick at Respondent's request.

While Petitioner had prior left knee surgery, he worked without need for medical treatment or time off work for years before November 2, 2007. On that date, Petitioner fell causing an aggravating injury to his left knee resulting in the need for arthroscopic surgery in October 6, 2008. Dr. Nenno and Respondent's first Section 12 examiner, Dr. Zoellick, agree on this point. After a period of post-operative physical therapy, Petitioner's left knee condition failed to improve. Dr. Nenno recommended Synvisc injections, a treatment option with which Dr. Zoellick agreed. Petitioner underwent these injections in May of 2009 to little avail. He continued to report knee pain that was localized to the patellofemoral region through August 14, 2009 at which time Dr. Nenno first recommended a second diagnostic arthroscopy or some form of a partial knee replacement depending on the intraoperative findings during that recommended surgery. Dr. Zoellick examined Petitioner a third time on February 9, 2010 and agreed that Petitioner had chondromalacia patella, but disagreed with the particular surgery recommended by Dr. Nenno opining that, instead, Petitioner would benefit from patellofemoral resurfacing.

When Petitioner returned to Dr. Nenno on May 4, 2010—one year and seven months after his first surgery, which showed intraoperative findings of significant chondromalacia of the medial facet of the patella, significant cartilaginous loose fragments within the knee, a significant plica formation along the medial femoral condyle, but otherwise fairly well-maintained medial and lateral compartments and anterior and posterior cruciate ligaments at the time—his complaints were broader and encompassed the whole knee. Dr. Nenno disagreed with the recommendation for patellofemoral resurfacing offering what appears to be a conservative approach explanation for his surgical recommendation. That is, Dr. Nenno noted that the purpose of the recommended arthroscopy was to evaluate whether Petitioner had significant arthritis in the rest of the knee, which would render the patellofemoral resurfacing recommended by Dr. Zoellick unsuccessful, and would then require the partial knee replacement he alternatively recommended.

By June 18, 2010, Dr. Nenno adjusted his surgical recommendation somewhat and indicated that, if his proposed exploratory arthroscopy was not approved, he would undertake Dr. Zoellick's approach with a patellofemoral arthroplasty and stated that a complete knee replacement might be required if the other compartments in Petitioner's left knee showed significant changes. In the Arbitrator's view, the difference of opinion between these two physicians regarding the method of treating Petitioner's complaints lies in their expertise, but supports a finding that Petitioner indeed had a continuing problem that was causally related to his injury at work.

Then Respondent selected another Section 12 examiner, Dr. D'Silva, and sent Petitioner for a fourth evaluation on June 29, 2011. Dr. D'Silva disagreed with both Dr. Nenno and Dr. Zoellick's assessments and noted that his examination showed symptom magnification by Petitioner and a mismatch between his objective findings on examination and Petitioner's subjective reports. He opined that Petitioner had non-specific left knee pain and attributed all of Petitioner's complaints (to the extent that he found them to align with his findings) to be unrelated to any injury at work.

In addition to finding Petitioner to be credible at trial (based on the consistency of his testimony at trial with the reports that he made to Dr. Nenno and Dr. Zoellick), the Arbitrator finds that Dr. D'Silva's opinions in this case are not persuasive. She declines to assign any weight to Dr. D'Silva's opinions given that he only examined Petitioner on one date, whereas his treating physician and even Respondent's first Section 12 examiner had the opportunity to examine Petitioner on at least three occasions over a period of years during which time their clinical and objective findings corroborated Petitioner's subjectively reported symptoms. Indeed, Dr. Nenno and Dr. Zoellick's consistently indicated that Petitioner required continued medical treatment even when they disagreed on exactly which medical approach to take to help resolve Petitioner's symptomatology. In light of the record as a whole, Dr. D'Silva's opinions are simply not persuasive.

Finally, the Arbitrator notes that the initial surgical approach recommended by Dr. Nenno and that recommended by Dr. Zoellick seem to carve apart Petitioner's knee. That is, Dr. Nenno and Dr. Zoellick agree that Petitioner's 2008 intraoperative findings suggest patellofemoral deterioration that is attributable, in part, to his injury at work. Their medical approaches diverge when Dr. Nenno suggests exploration of the remainder of Petitioner's knee and Dr. Zoellick indicates that Petitioner's symptoms would likely only be resolved by a resurfacing, but he does not address the other compartments of Petitioner's knee. Dr. Nenno does not specifically opine that Petitioner's deteriorating left knee condition outside of the patellofemoral region is causally related to the aggravating injury that he sustained at work. However, the Arbitrator finds that this is not dispositive in finding that Petitioner's left knee condition is causally related to his 2007 injury at work.

Again, the Arbitrator finds Petitioner's testimony at trial to be credible and it is notable that he spent almost five years since his first surgery (closer to six years since his injury) undergoing various conservative treatments to alleviate his left knee pain, he moved from one state to another and back again, and he underwent no less than four Section 12 examinations at Respondent's request in two different states over those years before any advanced medical treatment (i.e., Synvisc injections, surgery) recommended was approved. The Arbitrator finds it to be a reasonable proposition given the facts in this case that Petitioner's entire left knee condition has deteriorated significantly during that period of time, and notes that no evidence was produced that any degenerative condition in any other compartments beyond the patellofemoral region were caused solely by Petitioner's pre-existing left knee condition or any intervening injury. Indeed, while parsing out a body part in this manner is entirely appropriate, particularly given the divergence in medical approaches for how to best treat the area of concern on which both doctors agree (i.e., the patellofemoral region), there is no evidence in the record to support the proposition that Petitioner's symptoms manifesting elsewhere in the knee are due to anything other than deterioration attributable at least in part to the *sequelae* of Petitioner's 2007 injury at work. A deterioration that, Dr. Nenno now opines, will hopefully resolve through an even more aggressive surgery than he originally recommended: a total knee replacement.

Thus, based on the totality of the evidence, the Arbitrator finds that Petitioner has established by a preponderance of credible evidence that his current left knee condition of ill-being is causally related to his accident at work on November 2, 2007.



**In support of the Arbitrator's decision relating to Issue (K), Petitioner's entitlement to prospective medical care, the Arbitrator finds the following:**

As explained in the foregoing causation analysis, the Arbitrator finds that Petitioner's claimed current left knee condition of ill-being is related to the accident sustained at work on November 2, 2007. Again, while Dr. Nenno and Dr. Zoellick disagree on the exact surgery that should be performed, the Arbitrator finds the opinions and treatment recommendations of Dr. Nenno to be reasonable given the record as a whole. Thus, the Arbitrator awards the prospective medical care requested by pursuant to Section 8(a) of the Act in the form of the recommended total left knee replacement surgery prescribed by Dr. Nenno as it is reasonable and necessary to alleviate Petitioner from the effects of his injury at work.

**In support of the Arbitrator's decision relating to Issue (L), Petitioner's entitlement to temporary total disability benefits, the Arbitrator finds the following:**

The parties have stipulated that Petitioner was temporarily and totally disabled from November 3, 2007 through March 6, 2011. Thus, the Arbitrator awards this period of temporary total disability benefits. However, Respondent disputes that Petitioner was disabled from March 7, 2011 through July 23, 2013. As explained in detail above, the Arbitrator finds that Petitioner has established a causal connection between his current left knee condition and his injury at work. Moreover, Petitioner's treating medical records reflect that Petitioner was placed off work by Dr. Nenno pending approval of surgery and there is no indication that Petitioner has yet reached maximum medical improvement with regard to his left knee condition from Dr. Nenno. Thus, the Arbitrator finds that Petitioner is entitled to additional temporary total disability benefits from March 7, 2011 through July 23, 2013.